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Federal Register
Vol. 79, No. 247
Wednesday, December 24, 2014

Presidential Documents

Title 3—

The President

Executive Order 13685 of December 19, 2014

Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, in order to take additional steps to address the Russian occupation of the Crimea region of Ukraine, and with respect to the national emergency declared in Executive Order 13660 of March 6, 2014, and expanded by Executive Order 13661 of March 16, 2014, and Executive Order 13662 of March 20, 2014, hereby order:

Section 1. (a) The following are prohibited:

(i) new investment in the Crimea region of Ukraine by a United States person, wherever located;

(ii) the importation into the United States, directly or indirectly, of any goods, services, or technology from the Crimea region of Ukraine;

(iii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to the Crimea region of Ukraine; and

(iv) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person (including any foreign branch) of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to operate in the Crimea region of Ukraine;

(ii) to be a leader of an entity operating in the Crimea region of Ukraine;

(iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or

(iv) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 3. I hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsection 2(a) of this order would be detrimental to the interests of the United States, and I hereby suspend entry into the United States, as immigrants or nonimmigrants, of such persons. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 4. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 2 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13660, and expanded in Executive Orders 13661 and 13662, and I hereby prohibit such donations as provided by section 2 of this order.

Sec. 5. The prohibitions in section 2 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 6. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 7. Nothing in this order shall prohibit transactions for the conduct of the official business of the United States Government by employees, grantees, or contractors thereof.

Sec. 8. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

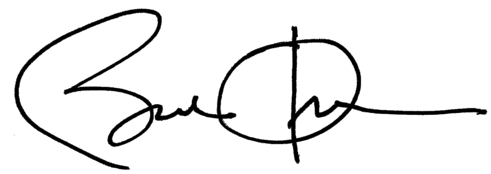
(d) the term ''Crimea region of Ukraine'' includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.

Sec. 9. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13660 and expanded in Executive Orders 13661 and 13662, there need be no prior notice of a listing or determination made pursuant to section 2 of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 12. This order is effective at 3:30 p.m. eastern standard time on December 19, 2014.



THE WHITE HOUSE,
December 19, 2014.

[FR Doc. 2014–30323
Filed 12–23–14; 8:45 am]
Billing code 3295–F5

Presidential Documents

Executive Order 13686 of December 19, 2014

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

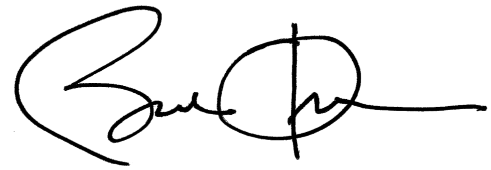
Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the **Federal Register**.

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2015. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2015.

Sec. 8. *Prior Order Superseded.* Executive Order 13655 of December 23, 2013, is superseded as of the effective dates specified in section 7 of this order.



THE WHITE HOUSE,
December 19, 2014.

Billing code 3295–F5

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

	1	2	3	4	5	6	7	8	9	10
GS-1	$18,161	$18,768	$19,372	$19,973	$20,577	$20,931	$21,528	$22,130	$22,153	$22,712
GS-2	20,419	20,905	21,581	22,153	22,403	23,062	23,721	24,380	25,039	25,698
GS-3	22,279	23,022	23,765	24,508	25,251	25,994	26,737	27,480	28,223	28,966
GS-4	25,011	25,845	26,679	27,513	28,347	29,181	30,015	30,849	31,683	32,517
GS-5	27,982	28,915	29,848	30,781	31,714	32,647	33,580	34,513	35,446	36,379
GS-6	31,192	32,232	33,272	34,312	35,352	36,392	37,432	38,472	39,512	40,552
GS-7	34,662	35,817	36,972	38,127	39,282	40,437	41,592	42,747	43,902	45,057
GS-8	38,387	39,667	40,947	42,227	43,507	44,787	46,067	47,347	48,627	49,907
GS-9	42,399	43,812	45,225	46,638	48,051	49,464	50,877	52,290	53,703	55,116
GS-10	46,691	48,247	49,803	51,359	52,915	54,471	56,027	57,583	59,139	60,695
GS-11	51,298	53,008	54,718	56,428	58,138	59,848	61,558	63,268	64,978	66,688
GS-12	61,486	63,536	65,586	67,636	69,686	71,736	73,786	75,836	77,886	79,936
GS-13	73,115	75,552	77,989	80,426	82,863	85,300	87,737	90,174	92,611	95,048
GS-14	86,399	89,279	92,159	95,039	97,919	100,799	103,679	106,559	109,439	112,319
GS-15	101,630	105,018	108,406	111,794	115,182	118,570	121,958	125,346	128,734	132,122

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$101,630	$82,350	$66,728	$54,069	$43,812	$39,166	$35,014	$31,301	$27,982
2	104,679	84,821	68,730	55,691	45,126	40,341	36,064	32,240	28,821
3	107,819	87,365	70,792	57,362	46,480	41,551	37,146	33,207	29,686
4	111,054	89,986	72,915	59,083	47,875	42,798	38,261	34,203	30,577
5	114,385	92,686	75,103	60,855	49,311	44,082	39,409	35,230	31,494
6	117,817	95,466	77,356	62,681	50,790	45,404	40,591	36,286	32,439
7	121,352	98,330	79,677	64,561	52,314	46,766	41,809	37,375	33,412
8	124,992	101,280	82,067	66,498	53,883	48,169	43,063	38,496	34,414
9	128,742	104,319	84,529	68,493	55,500	49,614	44,355	39,651	35,447
10	132,122	107,448	87,065	70,548	57,165	51,103	45,685	40,841	36,510
11	132,122	110,672	89,677	72,664	58,880	52,636	47,056	42,066	37,605
12	132,122	113,992	92,367	74,844	60,646	54,215	48,468	43,328	38,734
13	132,122	117,411	95,138	77,089	62,465	55,841	49,922	44,628	39,896
14	132,122	120,934	97,992	79,402	64,339	57,517	51,419	45,967	41,093

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*
(Only applies to incumbents who are not physicians or dentists)

Assistant Under Secretaries for Health $160,441**

	Minimum	Maximum
Service Directors	$119,192	$148,030
Director, National Center for Preventive Health	101,630	148,030
Physician and Dentist Base and Longevity Schedule* **		
Physician Grade	$99,957	$146,605
Dentist Grade	99,957	146,605
Clinical Podiatrist, Chiropractor, and Optometrist Schedule		
Chief Grade	$101,630	$132,122
Senior Grade	86,399	112,319
Intermediate Grade	73,115	95,048
Full Grade	61,486	79,936
Associate Grade	51,298	66,688
Physician Assistant and Expanded-Function Dental Auxiliary Schedule******		
Director Grade	$101,630	$132,122
Assistant Director Grade	86,399	112,319
Chief Grade	73,115	95,048
Senior Grade	61,486	79,936
Intermediate Grade	51,298	66,688
Full Grade	42,399	55,116
Associate Grade	36,485	47,429
Junior Grade	31,192	40,552

* This schedule does not apply to the Deputy Under Secretary for Health, Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health, and Medical Directors, Service Directors, and the Director of the National Center for Preventative Health who are physicians or dentists pursuant to 38 U.S.C. 7306(a) and 38 U.S.C. 7404(a). This schedule does not apply to the Chief Nursing Officer, Office of Nursing Services, pursuant to 38 U.S.C. 7404(e).

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $148,700.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$121,956	$183,300
Agencies without a Certified SES Performance Appraisal System	$121,956	$168,700

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Level I	$203,700
Level II	183,300
Level III	168,700
Level IV	158,700
Level V	148,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Vice President	$235,300
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Chief Justice of the United States	$258,100
Associate Justices of the Supreme Court	246,800
Circuit Judges	213,300
District Judges	201,100
Judges of the Court of International Trade	201,100

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2015)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	–	–	–	–	–	–	–	–	–	–	–
O-9	–	–	–	–	–	–	–	–	–	–	–
O-8	$9,946.20	$10,272.00	$10,488.30	$10,548.60	$10,818.60	$11,269.20	$11,373.90	$11,802.00	$11,924.70	$12,293.40	$12,827.10
O-7	8,264.40	8,648.40	8,826.00	8,967.30	9,222.90	9,475.80	9,767.70	10,059.00	10,351.20	11,269.20	12,043.80
O-6	6,186.60	6,796.80	7,242.90	7,242.90	7,270.50	7,582.20	7,623.30	7,623.30	8,056.50	8,822.40	9,272.10
O-5	5,157.60	5,810.10	6,212.10	6,288.00	6,539.10	6,689.10	7,019.10	7,261.50	7,574.70	8,053.80	8,281.20
O-4	4,449.90	5,151.30	5,495.10	5,571.60	5,890.50	6,232.80	6,659.10	6,990.60	7,221.00	7,353.60	7,430.10
O-3***	3,912.60	4,435.20	4,787.10	5,219.40	5,469.60	5,744.10	5,921.10	6,213.00	6,365.40	6,365.40	6,365.40
O-2***	3,380.70	3,850.20	4,434.30	4,584.00	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50
O-1***	2,934.30	3,054.30	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER ****											
O-3E	–	–	–	$5,219.40	$5,469.60	$5,744.10	$5,921.10	$6,213.00	$6,459.30	$6,600.90	$6,793.20
O-2E	–	–	–	4,584.00	4,678.50	4,827.60	5,079.00	5,273.10	5,418.00	5,418.00	5,418.00
O-1E	–	–	–	3,692.10	3,942.30	4,088.40	4,237.20	4,383.60	4,584.00	4,584.00	4,584.00
WARRANT OFFICERS											
W-5	–	–	–	–	–	–	–	–	–	–	–
W-4	$4,043.40	$4,349.70	$4,474.20	$4,597.20	$4,808.70	$5,018.10	$5,229.90	$5,548.80	$5,828.10	$6,094.20	$6,311.70
W-3	3,692.40	3,846.30	4,004.10	4,056.00	4,221.30	4,546.80	4,885.50	5,045.10	5,229.60	5,419.80	5,761.50
W-2	3,267.30	3,576.30	3,671.70	3,736.80	3,948.90	4,278.30	4,441.50	4,602.00	4,798.50	4,951.80	5,091.00
W-1	2,868.30	3,176.70	3,259.80	3,435.00	3,642.60	3,948.30	4,091.10	4,290.30	4,486.80	4,641.30	4,783.20

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2014, which is $15,125.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2015, which is $12,391.80 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $21,147.30 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2014, which is $15,125.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2015)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					COMMISSIONED OFFICERS						
O-10**	$16,072.20*	$16,150.50*	$16,486.80*	$17,071.50*	$17,071.50*	$17,925.30*	$17,925.30*	$18,821.10*	$18,821.10*	$19,762.50*	$19,762.50*
O-9	14,056.80	14,259.90	14,552.10	15,062.40	15,062.40	15,816.00*	15,816.00*	16,606.80*	16,606.80*	17,436.90*	17,436.90*
O-8	13,319.10	13,647.30	13,647.30	13,647.30	13,647.30	13,989.00	13,989.00	14,338.50	14,338.50	14,338.50	14,338.50
O-7	12,043.80	12,043.80	12,043.80	12,105.60	12,105.60	12,347.70	12,347.70	12,347.70	12,347.70	12,347.70	12,347.70
O-6	9,721.50	9,977.10	10,236.00	10,738.20	10,738.20	10,952.40	10,952.40	10,952.40	10,952.40	10,952.40	10,952.40
O-5	8,506.50	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40	8,762.40
O-4	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10	7,430.10
O-3***	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40	6,365.40
O-2***	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50	4,678.50
O-1***	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10	3,692.10
					COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****						
O-3E	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20	$6,793.20
O-2E	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00	5,418.00
O-1E	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00	4,584.00
					WARRANT OFFICERS						
W-5	$7,189.50	$7,554.30	$7,825.80	$8,126.70	$8,126.70	$8,533.50	$8,533.50	$8,959.80	$8,959.80	$9,408.30	$9,408.30
W-4	6,523.80	6,835.80	7,092.00	7,384.20	7,384.20	7,531.80	7,531.80	7,531.80	7,531.80	7,531.80	7,531.80
W-3	5,992.50	6,130.50	6,277.50	6,477.30	6,477.30	6,477.30	6,477.30	6,477.30	6,477.30	6,477.30	6,477.30
W-2	5,257.50	5,366.70	5,453.70	5,453.70	5,453.70	5,453.70	5,453.70	5,453.70	5,453.70	5,453.70	5,453.70
W-1	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00	4,956.00

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2014, which is $15,125.10 per month for officers at pay grades O-7 through O-10, and limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2015, which is $12,391.80 per month, for officers at O-6 and below.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $21,147.30 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2014, which is $15,125.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2015)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,885.20	$4,995.90	$5,135.40	$5,299.20	$5,465.10
E-8	-	-	-	-	-	$3,999.00	4,175.70	4,285.20	4,416.60	4,558.80	4,815.30
E-7	$2,780.10	$3,034.20	$3,150.30	$3,304.20	$3,424.50	3,630.90	3,747.00	3,953.40	4,125.00	4,242.30	4,367.10
E-6	2,404.50	2,645.70	2,762.40	2,876.10	2,994.60	3,261.00	3,364.80	3,565.80	3,627.30	3,672.00	3,724.20
E-5	2,202.90	2,350.80	2,464.50	2,580.60	2,761.80	2,951.40	3,107.10	3,125.70	3,125.70	3,125.70	3,125.70
E-4	2,019.60	2,122.80	2,238.00	2,351.40	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60
E-3	1,823.40	1,938.00	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30
E-2	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00
E-1**	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80
E-1***	1,430.40	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $7,894.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2015)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$5,730.30	$5,954.70	$6,190.50	$6,551.70	$6,551.70	$6,879.00	$6,879.00	$7,223.10	$7,223.10	$7,584.60	$7,584.60
E-8	4,945.20	5,166.60	5,289.30	5,591.40	5,591.40	5,703.60	5,703.60	5,703.60	5,703.60	5,703.60	5,703.60
E-7	4,415.40	4,577.70	4,664.70	4,996.20	4,996.20	4,996.20	4,996.20	4,996.20	4,996.20	4,996.20	4,996.20
E-6	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20	3,724.20
E-5	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70	3,125.70
E-4	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60	2,451.60
E-3	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30	2,055.30
E-2	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00	1,734.00
E-1**	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80	1,546.80
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $7,894.50 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,027.20.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

Locality Pay Area*	Rate
Alaska	24.69%
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Hawaii	16.51%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Hillsboro, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S	14.16%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2015)

AL-3/A	$105,900
AL-3/B	114,000
AL-3/C	122,300
AL-3/D	130,400
AL-3/E	138,700
AL-3/F	146,600
AL-2	154,800
AL-1	158,700

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Filed 12–23–14; 8:45 am]
Billing code 6325–01–C

Rules and Regulations

Federal Register

Vol. 79, No. 247

Wednesday, December 24, 2014

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2014–16]

Aggregate Biennial Contribution Limits

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting as a final rule, without change, an interim rule that removed regulatory limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle. The Commission is taking this action in light of the Supreme Court's recent decision in *McCutcheon* v. *FEC,* which held that the aggregate contribution limits are unconstitutional.

DATES: Effective December 24, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Mr. Theodore M. Lutz, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530. Documents relating to the rulemaking record are available on the Commission's Web site at *http://www.fec.gov/fosers* (REG 2014–07 Removal of Aggregate Contribution Limits (McCutcheon)).

SUPPLEMENTARY INFORMATION:

Background

The Federal Election Campaign Act, 52 U.S.C. 30101–45 (formerly 2 U.S.C. 431–55) (''FECA''), imposes limits on the aggregate amounts that an individual may contribute to federal candidates, political parties, and other political committees during a two-year election cycle. 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). The Commission had implemented FECA's aggregate limits in its regulations at 11 CFR 110.5.

On April 2, 2014, the United States Supreme Court held that the aggregate contribution limits are unconstitutional. *McCutcheon* v. *FEC,* 572 U.S. __, 134 S. Ct. 1434 (2014) (plurality op.). On October 17, 2014, the Commission published an interim rule to conform its regulations to the *McCutcheon* decision. *See* Aggregate Biennial Contribution Limits, 79 FR 62335 (Oct. 17, 2014). In its interim rule, the Commission deleted 11 CFR 110.5 and made technical and conforming changes to 11 CFR 110.1(c), 110.14(d) and (g), 110.17(b), and 110.19.[1] *Id.* The Commission sought comments on these changes.

The Commission published the interim rule without advance notice and comment because it fell under the ''good cause'' exception of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(B). The revisions were necessary to conform the Commission's regulations to the Supreme Court's holding that the statutory aggregate limits are unconstitutional. *See McCutcheon,* 134 S. Ct. at 1442. Because this action did not involve any Commission discretion or policy judgments, notice and comment were unnecessary. 5 U.S.C. 553(b)(B), (d)(3). A pre-publication notice and comment period would also have been contrary to the public interest because the 2014 election campaigns for federal office were ongoing, and so the delay that would have resulted from such a period might have caused confusion among the public as to the enforceability of the regulations addressed in the interim rule.

For the same reasons, the revisions fell within the ''good cause'' exception to the APA's delayed effective date provision and the requirements of the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2). Moreover, because the interim rule was exempt from the APA's notice and comment procedure under 5 U.S.C. 553(b), the Commission was not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor was the Commission required to submit these revisions for congressional review under FECA. *See* 52 U.S.C. 30111(d)(1), (4) (formerly 2 U.S.C. 438(d)(1), (4)) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''). Accordingly, the revisions were effective upon publication in the **Federal Register**—that is, on October 17, 2014.

Explanation and Justification

FECA imposes two types of limits on the amount that individuals may contribute in connection with federal elections. The ''base limits'' restrict how much an individual may contribute to a particular candidate or political committee per election or calendar year. *See* 52 U.S.C. 30116(a)(1) (formerly 2 U.S.C. 441a(a)(1)). The ''aggregate limits'' restrict the amounts that an individual may contribute to all candidate committees, political party committees, and other political committees in each two-year election cycle. *See* 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). Under the aggregate limits, as indexed for inflation in the 2013–14 election cycle, an individual could contribute up to $48,600 to candidates and their authorized committees, and up to $74,600 to other political committees, of which no more than $48,600 could be contributed to political committees other than national party committees. *See* Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 FR 8530, 8532 (Feb. 6, 2013).

On April 2, 2014, the Supreme Court held that the aggregate contribution limits at 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)) are unconstitutional. *See McCutcheon,* 134 S. Ct. at 1442, 1450–59. The Court's decision did not affect the base limits. *See id.* at 1442.

Accordingly, in the interim rule, the Commission removed the regulation at 11 CFR 110.5 that implemented FECA's aggregate contribution limits. The Commission also made technical and conforming amendments to 11 CFR 110.1(c)(3) (contributions to party committees), 110.14(d)(1) (contributions to delegates), 110.14(g)(2) (contributions to delegate committees), 110.17(b) (price index increases), and 110.19 (contributions by minors).

The Commission received three comments on the interim rule. One commenter argued in favor of ''limiting

[1] In an Advance Notice of Proposed Rulemaking published on the same day, the Commission requested comment on whether to begin a rulemaking to revise other regulations in light of certain language from the *McCutcheon* decision. *See* Aggregate Biennial Contribution Limits, 79 FR 62361 (Oct. 17, 2014). That notice will remain open for comment until January 15, 2015. *Id.*

contributions that can be made by one person/corporation'' and by non-profit organizations. A second commenter urged the Commission to evaluate ''anti-corruption and small donation/public financing proposals,'' including those at the state and local levels, and to ''petition the Congress and the Administration for a change.'' In response, the Commission notes that, as explained above, the revisions made in the interim rule were necessary to conform the Commission's regulations to the Supreme Court's holding in *McCutcheon, see* 134 S. Ct. at 1442, and did not involve any Commission discretion or policy judgments. The Commission is considering whether to commence a separate rulemaking to address other issues related to the *McCutcheon* decision. *See supra* n.1.

A third comment, filed by a national party committee, supported the revisions made in the interim rule. The commenter agreed that the changes made in the interim rule were necessary to conform Commission regulations to the *McCutcheon* decision, and the commenter stated that the interim rule ''completely implements the *McCutcheon* decision.'' [2]

Accordingly, after consideration of the comments, and for the reasons set forth above and in the interim rule, the Commission is adopting, as a final rule and without change, the revisions made to Commission regulations by the interim rule.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

Accordingly, the interim rule amending 11 CFR part 110, which was published at 79 FR 62335 on October 17, 2014, is adopted as a final rule without change.

On behalf of the Commission,

Dated: December 18, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–30222 Filed 12–23–14; 8:45 am]

BILLING CODE 6715–01–P

[2] Additionally, the comment asked the Commission to take action in several other rulemakings that are unrelated to the final rule addressed here and to refrain from further revising its regulations in light of the *McCutcheon* decision.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0759; Directorate Identifier 2014–CE–028–AD; Amendment 39–18052; AD 2014–26–01]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Concept Limited Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Alpha Aviation Concept Limited Model R2160 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as paint adherence defects inside the engine air intake box and cohesion defects inside the laminated ducting from the filter to the air intake box. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 28, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0759;* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Alpha Aviation, 59 Hautapu Road, RD 1, Cambridge 3493, New Zealand; telephone: +64 7 827 0528; fax: +64 7 929 2878; Internet: *www.alphaaviation.co.nz.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to Alpha Aviation Concept Limited Model R2160 airplanes. The NPRM was published in the **Federal Register** on October 2, 2014 (79 FR 59465). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

To prevent loss of engine power due to a possible paint adherence defect inside the engine air intake box, accomplish the following:

Inspect the engine air intake box (including the deflection flap) and the engine air intake ducting (include the area downstream of the filter) per Alpha Aviation Service Bulletin No. AA–SB–71–007 dated August 2014 or later approved revisions.

If any defects are found, replace affected parts per SB No. AA–SB–71–007 before further flight.

The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0759-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79 FR 59465, October 2, 2014) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (79 FR 59465, October 2, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 59465, October 2, 2014).

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $850, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $1,000, for a cost of $1,510 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0759; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–26–01 Alpha Aviation Concept Limited: Amendment 39–18052; Docket No. FAA–2014–0759; Directorate Identifier 2014–CE–028–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 28, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Alpha Aviation Concept Limited Model R2160 airplanes, serial numbers 001 to 378, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 73: Engine Fuel & Control.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as paint adherence defects inside the engine air intake box and cohesion defects inside the laminated ducting from the filter to the air intake box. We are issuing this AD to prevent paint defects from entering the engine which could cause loss of power.

(f) Actions and Compliance

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

(1) Within the next 100 hours time-in-service (TIS) after January 28, 2015 (the effective date of this AD) and repetitively thereafter every 100 hours TIS, inspect any painted engine air intake box (including the deflection flap) and the air intake ducting (including the area downstream of the filter) for paint adherence defects such as peeling, blistering, or bubbling following Alpha Aviation Service Bulletin (SB) No. AA–SB–71–007, Revision 0, dated August 2014.

(2) If any defects are found during the inspection required in paragraph (f)(1) of this AD, before further flight, replace the affected parts with airworthy parts following Alpha Aviation Service Bulletin No. AA–SB–71–007, Revision 0, dated August 2014.

(3) As of January 28, 2015 (the effective date of this AD), do not install a painted engine air intake box or a repaired engine air duct on any affected airplane.

(4) The replacement of defective parts is not a terminating action to the repetitive inspection of painted engine intake components required in paragraph (f)(1) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to MCAI Civil Aviation Authority (CAA) AD DCA/R2000/25A, dated August 28, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0759-0002.*

(i) Material Incorporated by Reference

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

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

(i) Alpha Aviation Service Bulletin (SB) No. AA–SB–71–007, Revision 0, dated August 2014.

(ii) Reserved.

(3) For Alpha Aviation Concept Limited service information identified in this AD, contact Alpha Aviation, 59 Hautapu Road, RD 1, Cambridge 3493, New Zealand; telephone: +64 7 827 0528; fax: +64 7 929 2878; Internet: *www.alphaaviation.co.nz.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For

information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on December 15, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–29833 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0981; Directorate Identifier 2013–NM–032–AD; Amendment 39–18036; AD 2014–24–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 97–11–07 and AD 99–18–23, which apply to all The Boeing Company Model MD–90–30 airplanes. AD 97–11–07 and AD 99–18–23 required revising the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate certain compliance times for principal structural element (PSE) inspections and replacement times for safe-life limited parts. This new AD also requires revising the maintenance or inspection program to incorporate a new PSE requirement for the rear spar caps of the horizontal stabilizer and its associated inspections, which would terminate certain inspections of the horizontal stabilizer rear spar. This AD was prompted by an analysis of data that identified a need to introduce a new PSE requirement for the rear spar caps of the horizontal stabilizer. We are issuing this AD to detect and correct fatigue cracking of PSEs and certain safe-life limited parts, which could adversely affect the structural integrity of the airplane.

DATES: This AD is effective January 27, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 27, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 8, 1999 (64 FR 48284, September 3, 1999).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0981; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; email: *roger.durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997); and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). AD 97–11–07 and AD 99–18–23 applied to all The Boeing Company Model MD–90–30 airplanes. The NPRM published in the **Federal Register** on December 9, 2013 (78 FR 73739). An action to reopen the comment period was issued on April 4, 2014 (79 FR 20138, April 11, 2014). The NPRM was prompted by an analysis of data that identified a need to introduce a new PSE requirement for the rear spar caps of the horizontal stabilizer. The NPRM proposed to continue to require revising the maintenance or inspection program to incorporate certain compliance times for PSE inspections and replacement times for safe-life limited parts. The NPRM also proposed to require revising the maintenance or inspection program to incorporate a new PSE requirement for the rear spar caps of the horizontal stabilizer and its associated inspections. We are issuing this AD to detect and correct fatigue cracking of PSEs and certain safe-life limited parts, which could adversely affect the structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. One commenter, a private individual, supported the NPRM (78 FR 73739, December 9, 2013).

Explanation of Changes Made to This AD

In the NPRM (78 FR 73739, December 9, 2013), we referred to McDonnell Douglas Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 1, dated January 1995; or McDonnell Douglas Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 2, dated July 1996; as the appropriate sources of service information for certain requirements retained from AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). We have changed paragraphs (g) and (h) of this AD by removing these references because this service information is out of date and no longer available. Instead, we have provided the option of using a method approved by the FAA to accomplish the actions in those paragraphs. We have also added a new paragraph (n) to this AD to provide credit for previous actions done using these earlier revisions. We have redesignated subsequent paragraphs accordingly.

We have also replaced the text ''alternative inspections and inspection intervals'' specified in paragraph (k) of the proposed AD (78 FR 73739, December 9, 2013) with the text ''alternative replacement times'' in paragraph (k) of this AD in order to clarify that no alternative replacement times for certain safe-life limited parts may be approved, except as provided by paragraphs (l) and (o) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 73739, December 9, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 73739, December 9, 2013).

Costs of Compliance

We estimate that this AD affects 52 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise airworthiness limitations [retained actions from AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997).	1 work-hour × 85 per hour = 85	0	85	4,420
Revise airworthiness limitations [retained actions from AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999).	1 work-hour × 85 per hour = 85	0	85	4,420
Revise airworthiness limitations [new action]	1 work-hour × 85 per hour = 85	0	85	4,420

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by
■ a. Removing Airworthiness Directive (AD) 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997); and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999); and
■ b. Adding the following new AD:

2014–24–03 The Boeing Company: Amendment 39–18036; Docket No. FAA–2013–0981; Directorate Identifier 2013–NM–032–AD.

(a) Effective Date

This AD is effective January 27, 2015.

(b) Affected ADs

This AD replaces AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997); and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999).

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 51, Standard Practices/Structures; Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by an analysis of data that identified a need to introduce a new principal structural element (PSE) requirement for the rear spar caps of the horizontal stabilizer. We are issuing this AD to detect and correct fatigue cracking of PSEs and certain safe-life limited parts, which could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of Airworthiness Limitations: Paragraph (a) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997)

This paragraph restates the requirements of paragraph (a) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Within 180 days after June 26, 1997 (the effective date of AD 97–11–07), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate the Item, Location, and Inspection Interval of PSEs identified in paragraphs (g)(1) through (g)(3) of this AD. This may be accomplished by inserting a copy of this AD into the ALI, or by using a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

(1) For Item 53.30.02.3 at Skin Panels, station (STA) 237 to 1395 Fuselage Skin in Constant Section from Longeron 3 Left to Longeron 3 Right: the initial interval is 60,000 landings. Repeat the inspection thereafter at intervals not to exceed 11,000 landings.

(2) For Item 53.30.02.4 at Skin Panels, STA 237 to 1395 Fuselage Hoop Skin Splice in Constant Section from Longeron 5 Left to Longeron 5 Right: the initial interval is 60,000 landings. Repeat the inspection

thereafter at intervals not to exceed 30,000 landings.

(3) For Item 54.10.04.1 at Thrust Bulkhead, Pylon—STA Yn 170.5—Rear Spar and Engine Thrust Support Fitting (Upper and Lower): the initial interval is 15,000 landings. Repeat the inspection thereafter at intervals not to exceed 4,500 landings.

(h) Retained Revision of Airworthiness Limitations: Paragraph (b) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997)

This paragraph restates the requirements of paragraph (b) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Within 180 days after June 26, 1997 (the effective date of AD 97–11–07), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate the Item, Location, and Inspection Interval of PSE 55.13.01.1 at Plates/Skin—Upper STA Xh 27.2 Left to Xh 27.2 Right—Upper Aft Skin Plank with Integral Stringers from Xh 7.234 to Xh 26.859. The initial interval is 60,000 landings. Repeat the inspection thereafter at intervals not to exceed 8,100 landings. This may be accomplished by inserting a copy of this AD into the ALI, or using a method approved by the Manager, Los Angeles ACO, FAA.

(i) Retained Restriction on Alternative Inspections and Inspection Intervals: Paragraph (c) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997)

This paragraph restates the restriction on alternative inspections and inspection intervals required by paragraph (c) of AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997). Except as provided by paragraphs (l) and (o) of this AD: After the actions required by paragraphs (g) and (h) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the parts specified in paragraphs (g) and (h) of this AD.

(j) Retained Revision of Airworthiness Limitations of Safe-Life Limited Parts: Paragraph (a) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999)

This paragraph restates the requirements of paragraph (a) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). Within 180 days after October 8, 1999 (the effective date of AD 99–18–23, Amendment 39–48284 (64 FR 48284, September 3, 1999)), revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate the Part Number, Item, and Mandatory Replacement Time of certain safe-life limited parts by inserting McDonnell Douglas Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 3, dated November 1997, into the ALI.

(k) Retained Restriction on Alternative Replacement Times: Paragraph (b) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999)

This paragraph restates the restriction on alternative replacement times required by paragraph (b) of AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999). Except as provided by paragraphs (l) and (o) of this AD: After the actions required by paragraph (j) of this AD have been accomplished, no alternative replacement times may be approved for the safe-life limited parts specified in McDonnell Douglas Airworthiness (Airworthiness Limitations Instructions (ALI) Report No. MDC–94K9000, Revision 3, dated November 1997.

(l) New Requirements of This AD: Revision of the Maintenance Program

Within 180 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the tasks specified in Boeing MD–90 Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 6, dated September 2011. The compliance times for the initial compliance time and repetitive intervals for the tasks are stated in Boeing MD–90 Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 6, dated September 2011. Doing the revision required by this paragraph terminates the revisions required by paragraphs (g), (h), and (j) of this AD.

(m) New Restriction on Alternative Actions and Intervals

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

(n) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using McDonnell Douglas Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 1, dated January 1995.

(2) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using McDonnell Douglas ALI, Report No. MDC–94K9000, Revision 2, dated July 1996.

(o) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 97–11–07, Amendment 39–10036 (62 FR 27941, May 22, 1997); and AD 99–18–23, Amendment 39–11289 (64 FR 48284, September 3, 1999); are approved as AMOCs for the corresponding provisions of this AD.

(p) Related Information

For more information about this AD, contact Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5233; fax: 562–627–5210; email: *roger.durbin@faa.gov*.

(q) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 27, 2015.

(i) Boeing MD–90 Airworthiness Limitations Instructions (ALI), Report No. MDC–94K9000, Revision 6, dated September 2011.

(ii) Reserved.

(4) The following service information was approved for IBR on October 8, 1999 (64 FR 48284, September 3, 1999).

(i) McDonnell Douglas Airworthiness Limitations Instructions (ALI) Report No. MDC–94K9000, Revision 3, dated November 1997.

(ii) Reserved.

(5) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on November 19, 2014.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30131 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0366; Directorate Identifier 2011–NM–024–AD; Amendment 39–18038; AD 2014–24–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. This AD was prompted by a report of a cracked reveal made from a casting found within a group of airplanes that should have machined reveals made only from 6061 aluminum. This AD requires an inspection to determine the material of the number 3 main entry door (MED) corner reveal, repetitive inspections of certain reveals for cracking, and corrective action if necessary. This AD also requires repetitive inspections for cracking of 6061 machined aluminum one-piece corner reveals, and replacement with 6061 machined aluminum two-piece corner reveals if necessary, which terminates certain repetitive inspections. We are issuing this AD to detect and correct fatigue cracking of the lower forward corner reveal of the number 3 MEDs, which could lead to the door escape slide departing the airplane when the door is opened and the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

DATES: This AD is effective January 28, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 28, 2015.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2013–0366; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008). AD 2008–18–07 applies to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. The NPRM published in the **Federal Register** on May 8, 2013 (78 FR 26720). The NPRM was prompted by a report of a cracked reveal made from a casting found within a group of airplanes that should have machined reveals made only from 6061 aluminum. The NPRM proposed to retain all the requirements of AD 2008–18–07. The NPRM also proposed to add, for certain airplanes, an inspection to determine the material of the number 3 MED corner reveal, repetitive inspections for cracking of 6061 machined aluminum one-piece corner reveals, and replacement with 6061 machined aluminum two-piece corner reveals if necessary, which terminates certain repetitive inspections. We are issuing this AD to detect and correct fatigue cracking of the lower forward corner reveal of the number 3 MEDs, which could lead to the door escape slide departing the airplane when the door is opened and the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

Related AD

AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), requires, for The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, an inspection to determine the material of a number 3 MED corner reveal, repetitive inspections of certain reveals for cracking, a detailed inspection of certain reveals for a sharp edge and cracking, and corrective action if necessary. AD 2008–18–07 allows reveal replacement as an option to certain inspections. AD 2008–18–07 was prompted by reports of cracking and/or a sharp edge in the lower forward corner reveal of the number 3 MEDs. AD 2008–18–07 refers to Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007, as the appropriate source of service information for the required actions specified in that AD.

Explanation of Difference in Requirements Between the NPRM (78 FR 26720, May 8, 2013) and This Final Rule

In the NPRM (78 FR 26720, May 8, 2013), the FAA proposed to supersede AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), to reflect the changes in airplane groups specified in revised service information, Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. However, based on the comments received on the NPRM, it became evident that it was difficult to follow the numerous changes between Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007, and Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, as well as in following the corresponding actions specified in the NPRM.

There are only two significant changes in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010: (1) Airplanes having line numbers 1038 through 1270 were moved from Group 2 to Group 4; and (2) for Group 4 airplanes, there are additional actions. Therefore, for clarity, we have determined that a less burdensome approach is to revise this final rule to include only the new actions for Group 4 airplanes. Instead of superseding AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), this final rule is a stand-alone AD, applicable only to Group 4 airplanes as identified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, except for those airplanes that have been converted to an all-cargo configuration. Airplanes identified in the applicability of AD 2008–18–07 are still required to continue to comply with the requirements of that AD.

Since this AD does not supersede AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), paragraphs (g) through (m), (p), (q), and (v) of the NPRM (78 FR 26720, May 8, 2013) are not included in this AD. Also, the corresponding paragraph identifiers have been redesignated in this final rule, as listed in the following table:

REDESIGNATED PARAGRAPH IDENTIFIERS

Requirement in the proposed AD (78 FR 26720, May 8, 2013)	Corresponding requirement in this AD
paragraph (t)	paragraph (g).
paragraph (s)	paragraph (h).
paragraph (r)	paragraph (i).
paragraph (u)	paragraph (j).
paragraph (n)	paragraph (k).
paragraph (o)	paragraph (l).
paragraph (w)	paragraph (n).

We have also revised paragraphs (n) and (o) of the proposed AD (78 FR 26720, May 8, 2013) (redesignated as paragraphs (k) and (l) of this AD) that referred to ''AD 2008–18–07.'' In paragraphs (k) and (l) of this AD, we have referred to the current service information, Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, instead of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), for the locations where cast 356 aluminum reveals and machined 6061 aluminum reveals may not be installed. Paragraphs (k) and (l) of this AD state that the parts installation prohibition ends the parts installation prohibitions specified in paragraphs (n) and (o) of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008).

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (78 FR 26720, May 8, 2013) and the FAA's response to each comment.

Request To Clarify the Cause of the Unsafe Condition

Boeing asked that we clarify the cause of the unsafe condition identified in paragraph (e) of the proposed AD (78 FR 26720, May 8, 2013). Boeing stated that the report that prompted the proposed supersedure of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), involved a cracked casting on an airplane that should have machined reveals made from only 6061 aluminum.

We agree that the unsafe condition should be clarified for the reason provided. We have changed the wording for the unsafe condition identified in the SUMMARY section and in paragraph (e) of this final rule to specify that ''This new AD was prompted by a report of a cracked reveal made from a casting found within a group of airplanes that should have machined reveals made only from 6061 aluminum.'' We have also clarified the Discussion section of this final rule to specify that the NPRM (78 FR 26720, May 8, 2013) was prompted by that report.

Request To Revise Wording in the NPRM (78 FR 26720, May 8, 2013)

Boeing requested numerous changes related to the wording in paragraphs (g), (h), (j), (u) and (v) of the NPRM (78 FR 26720, May 8, 2013).

We acknowledge the commenter's concerns for clarity. However, as stated previously, this AD does not supersede AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008). The changes requested by the commenter referred to the ''retained'' paragraphs of AD 2008–18–07, which are not restated in this AD; therefore, no action is necessary in this regard.

Request To Revise Service Information

Delta Airlines (Delta) requested that Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, be revised prior to the issuance of this final rule. Delta stated that paragraphs (r) and (s) of the proposed AD (78 FR 26720, May 8, 2013) (redesignated as paragraphs (i) and (h) of this AD) are clear and understandable; however, when Delta reviewed the required actions in Table 1 of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, Delta was not able to clearly determine which conditions were linked with which actions. Delta stated that Boeing also agrees that the compliance tables of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, should be clarified for operators' use.

We disagree with delaying this AD to wait for revised service information in light of the urgency of the identified unsafe condition. As Delta stated, the tables contained in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, are complicated and could be misinterpreted; however, we have addressed this concern by specifying the requirements and clarifying the appropriate actions in paragraphs (h) and (i) of this AD. When the service information is revised, we might consider approving it as an alternative method of compliance (AMOC) for these actions. We have not changed this final rule in this regard.

Request To Address an Error in Service Information

Delta stated that, in the last row under the ''Action'' column of Table 8 of paragraph 1.E., Compliance, of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, there is a reference to ''Table 9,'' which does not exist. Delta stated that the correct paragraph reference is ''Paragraph 3.B., Part 2,'' as confirmed in Delta's correspondence with Boeing. Delta requested that Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, be revised prior to the issuance of this final rule, or that we address this error in this final rule, or, at a minimum, address this error in a global AMOC.

We partially agree. We disagree to wait for revised service information in light of the urgency of the identified unsafe condition. However, we agree that the reference to Table 9 in paragraph 1.E., Compliance, of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, is incorrect. To address this error, we have added a new paragraph (m) in this AD to state that, where the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, specify a post-repair detailed inspection in accordance with Table 9, this AD requires a detailed inspection in accordance with paragraph 3.B., Part 2, of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. When revised service information becomes available, we might consider approving it as an AMOC for the actions required by this AD.

Request To Revise the Proposed AD To Include an Inspection for a Sharp Edge for Group 4 Airplanes

Boeing asked that we revise paragraph (r)(2) of the proposed AD (78 FR 26720, May 8, 2013) (redesignated as paragraph (i)(2) of this AD) to include an inspection for a potential sharp edge common to the reveal. Boeing stated that this inspection might be the first inspection performed and, therefore, it is possible that a sharp edge could be found on a machined reveal.

We do not agree to revise the wording of paragraph (i)(2) of this AD (designated as paragraph (r)(2) of the proposed AD (78 FR 26720, May 8, 2013)). Paragraph (i)(2) of this AD requires, for previously inspected Group 4 airplanes, a material-type inspection to determine if the corner reveal is a casting, and, if a casting is found, continued inspections or replacement of the reveal with a two-piece machined reveal. Castings do not have sharp edges. Group 4 airplanes that were not previously inspected or changed, that have corner reveals found not to be castings, require inspections for a sharp edge in paragraph (g)(2) of this AD. We have not changed this final rule in this regard.

Request for Alternative Corrective Action for Group 4 Airplanes

Boeing asked that we revise paragraph (t)(1) of the proposed AD (78 FR 26720, May 8, 2013) (redesignated as paragraph (g)(1) of this AD) to allow a weld repair for a cracked reveal made from a casting on Group 4 airplanes. Boeing stated that this would allow operators to repair the casting if they cannot obtain a machined reveal.

We agree that paragraph (g)(1) of this AD should allow a weld repair as an alternative corrective action since this was a permitted action for Group 2 airplanes in AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008). This alternative corrective action for Group 4 airplanes was contained in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, but was inadvertently omitted in the proposed AD (78 FR 26720, May 8, 2013). Paragraph (t) of the NPRM is redesignated as paragraph (g) in this AD and we have revised paragraph (g)(1) by adding new paragraphs (g)(1)(i) and (g)(1)(ii) in order to allow a weld repair as an option to replacing the reveal if any cracking is found. In paragraph (g)(1)(ii) of this AD we specify repairing in accordance with Part 4 of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. The inspection for cracking specified in paragraph (g)(1) of this AD is to be repeated thereafter at intervals not to exceed 3,000 flight cycles until a new two-piece reveal is installed in accordance with the requirements of paragraph (g)(1)(i) of this AD.

Request To Reference Service Bulletin Information Notices or Revise Service Bulletin

Delta requested that Boeing Service Bulletin Information Notice 747–53–2460 IN 03, dated March 24, 2011, be referenced as an approved deviation from Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Alternatively, Boeing requested that we delay the issuance of this final rule until Boeing revises Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, to incorporate the changes outlined in that information notice.

We partially agree. We agree that Boeing Service Bulletin Information Notice 747–53–2460 IN 03, dated March 24, 2011, contains acceptable information for the inspection and modification mandated in this AD. However, we disagree with delaying issuance of this final rule until revised service information becomes available. We have determined that to delay this final rule would be inappropriate, because the inspections of the number 3 MED reveals and corrective actions are needed to reduce the risk of the identified unsafe condition addressed in this AD. The information that Boeing Service Bulletin Information Notice 747–53–2460 IN 03, dated March 24, 2011, clarifies is for reference only and is not required to address the identified unsafe condition. When revised service information becomes available, we might consider approving it as an AMOC for the actions required by this AD. We have made no change to this AD in this regard.

Explanation of Additional Changes Made to This Final Rule

We redesignated paragraphs (r) and (r)(2) of the NPRM (78 FR 26720, May 8, 2013) as paragraphs (i) and (i)(2) of this final rule and removed the phrase ''Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010,'' from the initial compliance times listed in those paragraphs. In the proposed AD, we stated that the compliance times could be calculated from the most recent work performed in accordance with Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007; or Revision 2, dated December 22, 2010; but this would introduce an error in paragraph (i) of this AD since it would require operators to complete the inspections required by Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, for a second time, if the reference to Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, remained.

Paragraph (i)(1) of this final rule specifies inspections for cracking of any corner reveal found to be a one-piece or two-piece casting. Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, provides inspection procedures for one-piece corner reveals, but not for the two-piece corner reveals. Because the inspection procedures for the two-piece corner reveals were not included in the service information, operators would have been unable to comply with the proposed requirement to inspect a two-piece corner reveal, and in this case would have been required to obtain approval of an alternative method of compliance for this inspection. We have therefore revised paragraph (i)(1) of this AD to provide the appropriate procedures for both scenarios.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (78 FR 26720, May 8, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 26720, May 8, 2013).

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

Costs of Compliance

We estimate that this AD affects 166 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Material type inspection and inspection for cracks.	14 work-hours × $85 per hour = $1,190 per inspection cycle.	$0	$1,190 per inspection cycle ...	$197,540 per inspection cycle.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of the inspections. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corner reveal removal and replacement	17 work-hours × $85 per hour = $1,445 per inspection cycle.	$9,525	$10,970 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–24–05 The Boeing Company: Amendment 39–18038; Docket No. FAA–2013–0366; Directorate Identifier 2011–NM–024–AD.

(a) Effective Date

This AD is effective January 28, 2015.

(b) Affected ADs

Certain requirements of this AD terminate certain requirements of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes, certificated in any category, identified as Group 4 airplanes in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, except airplanes that have been converted to an all-cargo configuration. Also, the requirements of this AD are applicable when a converted airplane operating in an all-cargo configuration is converted back to a passenger or passenger/cargo configuration.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of a cracked reveal made from a casting found within a group of airplanes that should only have machined reveals made from 6061 aluminum. We are issuing this AD to detect and correct fatigue cracking of the lower forward corner reveal of the number 3 main entry doors (MEDs), which could lead to the door escape slide departing the airplane when the door is opened and the slide is deployed, and consequent injuries to passengers and crew using the door escape slide during an emergency evacuation.

(f) Compliance

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

(g) Actions for Group 4 Airplanes: Not Previously Inspected or Changed

For Group 4 airplanes identified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, that have not been previously inspected or changed in accordance with Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007: Before the accumulation of 1,500 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, do a material type inspection to determine if the lower forward corner reveal is made from 6061 machined aluminum plate or 356 aluminum casting, in accordance with Part 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Doing the inspection specified in this paragraph terminates the inspections required by paragraph (j) of AD 2008–18–07, Amendment 38–15664 (73 FR 56960, October 1, 2008), for that airplane only.

(1) If, during any inspection required by paragraph (g) of this AD, any corner reveal is found to be a casting: Before the accumulation of 7,000 total flight cycles; within 2,000 flight cycles after the effective date of this AD; or within 3,000 flight cycles after the most recent inspection of the

number 3 MED corner reveal was done in accordance with Boeing Service Bulletin 747–53A2378, Revision 4, dated June 10, 2010; whichever occurs later; do a detailed inspection for cracking of the corner reveal, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Repeat the inspection for cracking thereafter at intervals not to exceed 3,000 flight cycles until a new two-piece reveal is installed in accordance with the requirements of paragraph (g)(1)(i) of this AD. If any cracking is found, do the actions specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Replace the cast reveal with a new 6061 machined aluminum two-piece corner reveal, before further flight, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(ii) Repair all cracking, before further flight, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(2) If, during any inspection required by paragraph (g) of this AD, a corner reveal is found that is not a casting: Before further flight, do a detailed inspection for a sharp edge, in accordance with Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010; and do a detailed inspection for cracking of the corner reveal, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Repeat the inspection for cracking thereafter at intervals not to exceed 6,000 flight cycles until the corner reveal is replaced with a 6061 machined aluminum two-piece corner reveal in accordance with the requirements of paragraph (j) of this AD.

(i) If any sharp edge is found during any inspection required by paragraph (g)(2) of this AD, before further flight, rework the corner reveal, in accordance with Part 1 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(ii) If any cracking is found during any inspection required by paragraph (g)(2) of this AD, before further flight, replace the corner reveal with a 6061 machined aluminum two-piece corner reveal, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(h) Actions for Previously Inspected Group 4 Airplanes: Corner Reveal Replaced With One-Piece Reveal

For Group 4 airplanes identified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, that have been inspected previously in accordance with Boeing Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007, and on which the corner reveal has been replaced with a one-piece reveal: Within 10,000 flight cycles after the date the reveal was replaced with a one-piece corner reveal, do a detailed inspection for cracking of the corner reveal, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Repeat the inspection for cracking thereafter at intervals not to exceed 6,000 flight cycles until the corner reveal is replaced with a 6061 machined aluminum two-piece corner reveal, in accordance with the requirements of paragraph (j) of this AD. If any cracking is found during any inspection required by this paragraph, before further flight, replace the one-piece corner reveal with a 6061 machined aluminum two-piece corner reveal, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(i) Actions for Previously Inspected Group 4 Airplanes: Corner Reveal Not Replaced, or Replaced With Two-Piece Reveal

For Group 4 airplanes identified in Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, that have been inspected previously in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007; and on which the corner reveal either has not been replaced, or has been replaced with a two-piece reveal that was made by reworking an existing one-piece reveal: Before the accumulation of 7,000 total flight cycles; within 3,000 flight cycles after the most recent inspection or rework done in accordance with Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007; or within 1,000 flight cycles after the effective date of this AD; whichever occurs later; do a material type inspection to determine if the corner reveal is a casting, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Doing the inspection specified in this paragraph terminates the inspections required by paragraph (j) of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), for these airplanes.

(1) If, during any inspection required by paragraph (i) of this AD, any corner reveal is found to be a casting: Before further flight, do a detailed inspection for cracking of the corner reveal. For one-piece reveals, inspect in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010; for two-piece reveals, inspect using a method approved in accordance with the procedures specified in paragraph (n) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until a new two-piece reveal is installed in accordance with the requirements of paragraph (i)(1)(i) of this AD. If any cracking is found, do the actions specified in paragraph (i)(1)(i) or (i)(1)(ii) of this AD.

(i) Replace the cast reveal with a new 6061 machined aluminum two-piece corner reveal, before further flight, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(ii) Repair all cracking, before further flight, in accordance with Part 4 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(2) If, during any inspection required by paragraph (i) of this AD, any one-piece corner reveal is found to be installed and is not a casting: Before the accumulation of 10,000 total flight cycles; or within 6,000 flight cycles after the most recent inspection done in accordance with Boeing Special Attention Service Bulletin 747–53–2460, Revision 1, dated February 13, 2007; whichever occurs later; do a detailed inspection of the corner reveal for cracking, in accordance with Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. Repeat the inspection for cracking thereafter at intervals not to exceed 6,000 flight cycles until the corner reveal is replaced with a 6061 machined aluminum two-piece corner reveal. If any cracking is found during any inspection required by this paragraph, before further flight, replace the corner reveal with a 6061 machined aluminum two-piece corner reveal, in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(j) Terminating Action for Repetitive Inspections

Installation of a 6061 machined aluminum two-piece corner reveal in accordance with Part 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, terminates the repetitive inspections required by paragraphs (g), (h), and (i) of this AD.

(k) Parts Installation Prohibition: (Cast 356 Aluminum) Reveals

As of the effective date of this AD, no person may install a door lower forward corner reveal made of cast 356 aluminum on any airplane at a location specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. This parts installation prohibition ends the parts installation prohibition specified in paragraph (n) of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), for the airplanes identified in paragraph (c) of this AD.

(l) Parts Installation Limitation: (Machined 6061 Aluminum) Reveals

As of the effective date of this AD, no person may install a door lower forward corner reveal made of machined 6061 aluminum on any airplane at a location specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, unless it has been confirmed/reworked to be without a sharp edge, in accordance with Part 1 of the Accomplishment Instructions of Boeing

Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010. This parts installation prohibition ends the parts installation prohibition specified in paragraph (o) of AD 2008–18–07, Amendment 39–15664 (73 FR 56960, October 1, 2008), for the airplanes identified in paragraph (c) of this AD.

(m) Exceptions to Service Information Specifications

Where Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010, specifies a post-repair detailed inspection in accordance with Table 9, this AD requires a detailed inspection in accordance with paragraph 3.B., Part 2, of Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (o) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-REQUESTS@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(o) Related Information

For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *bill.ashforth@faa.gov.*

(p) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 747–53–2460, Revision 2, dated December 22, 2010.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on November 19, 2014.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–30132 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD; Amendment 39–18017; AD 2014–23–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engine models with certain second-stage high-pressure turbine (HPT) air seals installed. The time required to perform the initial eddy current inspection (ECI) in the Compliance section is incorrect. This document corrects that error. In all other respects, the original document remains the same.

DATES: This final rule is effective on December 26, 2014. The effective date of AD 2014–23–01, Amendment 39–18017 (79 FR 69369, November 21, 2014) remains December 26, 2014.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 17, 2013 (78 FR 49111, August 13, 2013).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Theriault, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

SUPPLEMENTARY INFORMATION: AD 2014–23–01, Amendment 39–18017 (79 FR 69369, November 21, 2014), requires initial and repetitive inspections for cracks in second-stage HPT air seals, the removal of the mating hardware if the second-stage HPT air seal is found with a through-crack, and a mandatory terminating action for all PW PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engine models with certain second-stage HPT air seals installed.

As published, the time required to perform the initial ECI in the Compliance section is incorrect. AD 2014–23–01, paragraph (e)(2)(i), requires an initial ECI for cracks within 1,000 cycles-in-service after September 17, 2013, or before further flight, whichever occurs later. That compliance time is more restrictive than intended and will likely ground airplanes. The intent was to require an initial ECI for cracks before reaching 2,200 cycles since new, or within 1,000 cycles-in-service after September 17, 2013, or before further flight, whichever occurs later.

No other part of the preamble or regulatory information has been changed.

The effective date of AD 2014–23–01 remains December 26, 2014.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–15–09, Amendment 39–17525 (78 FR 49111, August 13, 2013), and adding the following new AD:

2014–23–01 Pratt & Whitney Division: Amendment 39–18017; Docket No. FAA–2013–0072; Directorate Identifier 2013–NE–04–AD.

(a) Effective Date

This AD is effective December 26, 2014.

(b) Affected ADs

This AD supersedes AD 2013–15–09, Amendment 39–17525 (78 FR 49111, August 13, 2013).

(c) Applicability

This AD applies to all Pratt & Whitney Division (PW) PW4074, PW4074D, PW4077, PW4077D, PW4084D, PW4090, and PW4090–3 turbofan engine models with second-stage high-pressure turbine (HPT) air seal, part number (P/N) 54L041, 50L960, or 50L976, installed.

(d) Unsafe Condition

This AD was prompted by additional reports of cracking in the second-stage HPT air seal. We are issuing this AD to prevent failure of the second-stage HPT air seal, which could lead to uncontained engine failure and damage to the airplane.

(e) Compliance

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

(1) At the next piece-part exposure after the effective date of this AD, do the following:

(i) Remove from service second-stage HPT air seals, P/Ns 50L960, 50L976, and 54L041.

(ii) Perform a fluorescent-penetrant inspection (FPI) of the second-stage HPT air seal, P/N 54L041, for a through-crack in the front forward fillet radius.

(iii) If a through-crack in the front forward fillet radius is found, remove the first-stage HPT hub, second-stage HPT hub, and second-stage HPT blade retaining plate from service. Do not reinstall the first-stage HPT hub, second-stage HPT hub, or second-stage HPT blade retaining plate into any engine.

(2) For engines with second-stage HPT air seals, P/N 54L041, installed, perform initial and repetitive inspections for cracks on-wing until the part is removed from the engine as follows:

(i) Perform an initial eddy current inspection (ECI) for cracks before reaching 2,200 cycles since new, within 1,000 cycles-in-service after September 17, 2013, or before further flight, whichever occurs later.

(ii) Thereafter, repeat the ECI every 1,200 cycles since last inspection, or fewer, depending on the results of the inspection.

(iii) Use section 4.0 of the appendix of PW Alert Service Bulletin (ASB) No. PW4G–112–A72–330, Revision 2, dated July 11, 2013, to perform the inspection and use paragraph 8 of the Accomplishment Instructions of PW ASB No. PW4G–112–A72–330, Revision 2, dated July 11, 2013, to disposition the results of the inspection.

(f) Installation Prohibition

(1) After the effective date of this AD, do not install any second-stage HPT air seal, P/N 54L041, P/N 50L960, or P/N 50L976, into any engine.

(2) After the effective date of this AD, do not install any spare first-stage HPT hub, second-stage HPT hub, or second-stage HPT blade retaining plate that was previously mated in service to a second-stage HPT air seal, P/N 54L041, that was found to have a through-crack in the front forward fillet radius, into any engine.

(g) Definitions

For the purpose of this AD:

(1) Piece-part exposure is when the second-stage HPT air seal is removed from the engine and fully disassembled.

(2) A through-crack is a crack that has propagated through the thickness of the part and can be seen on both the inner diameter and outer diameter of the front forward fillet radius.

(h) Credit for Previous Actions

(1) If you performed an ECI of the second-stage HPT air seal before the effective date of this AD, using PW ASB No. PW4G–112–A72–330, Revision 1, dated February 14, 2013, or an earlier version, you have met the requirements of paragraph (e)(2)(i) of this AD.

(2) If you performed an in-shop FPI of the second-stage HPT air seal before the effective date of this AD, you have met the requirements of paragraph (e)(2)(i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(j) Related Information

(1) For more information about this AD, contact Jo-Ann Theriault, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7105; fax: 781–238–7199; email: *jo-ann.theriault@faa.gov.*

(2) PW Service Bulletin (SB) No. PW4G–112–72–332, Revision 3, dated June 25, 2014, which is not incorporated by reference in this AD, can be obtained from PW, using the contact information in paragraph (k)(3) of this AD. This SB provides guidance on how to replace the second-stage HPT air seal with an air seal that is more resistant to low cycle fatigue cracks.

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 17, 2013 (78 FR 49111, August 13, 2013).

(i) Pratt & Whitney (PW) Alert Service Bulletin No. PW4G–112–A72–330, Revision 2, dated July 11, 2013.

(ii) Reserved.

(4) For PW service information identified in this AD, contact Pratt & Whitney Division, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

(5) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on December 22, 2014.

Colleen M. D'Alessandro,

Assistant Directorate Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–30283 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2009–F–0303]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Advantame

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; response to objections.

SUMMARY: The Food and Drug Administration (FDA or we) is responding to objections we received on the final rule that amended the food additive regulations to provide for the safe use of advantame as a non-nutritive sweetener and flavor enhancer in foods generally, except in meat and poultry. After reviewing the objections to the final rule, we have concluded that they do not provide a basis for modifying or revoking the regulation. We are also confirming the effective date of May 21, 2014, for the final rule.

DATES: The effective date of the final rule published on May 21, 2014 (79 FR 29078), is confirmed: May 21, 2014.

FOR FURTHER INFORMATION CONTACT: Felicia M. Ellison, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1264.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 21, 2009 (74 FR 35871), we announced that a food additive petition (FAP 9A4778), had been filed by Ajinomoto Co., Inc., c/o Ajinomoto Corporate Services LLC, 1120 Connecticut Ave. NW., suite 1010, Washington, DC 20036. The petition proposed to amend the food additive regulations in part 172, *Food Additives Permitted for Direct Addition to Food for Human Consumption* (21 CFR part 172), to provide for the safe use of advantame as a non-nutritive sweetener in tabletop applications and powdered beverage mixes. Subsequently, in a letter dated August 24, 2012, the petitioner informed us that FAP 9A4778 had been transferred from Ajinomoto Corporate Services LLC to Ajinomoto North America, Inc., One Parker Plaza, 400 Kelby St., Fort Lee, NJ 07024.

In an amended document published in the **Federal Register** of October 26, 2012 (77 FR 65340), we announced that Ajinomoto Co., Inc., c/o Ajinomoto North America, Inc., One Parker Plaza, 400 Kelby St., Fort Lee, NJ 07024, had amended its food additive petition to provide for the safe use of advantame as a non-nutritive sweetener and flavor enhancer in foods generally, except in meat and poultry.

In response to FAP 9A4778, we issued a final rule in the **Federal Register** on May 21, 2014 (79 FR 29078), permitting the safe use of advantame as a non-nutritive sweetener and flavor in foods generally, except in meat and poultry. This regulation is codified at § 172.803. We based our decision on data contained in the petition and in our files. In the preamble to the final rule (79 FR 29078 at 29079–29084), we outlined the basis for our decision and stated that objections to the final rule and requests for a hearing were due within 30 days of the publication date (*i.e.,* by June 20, 2014).

II. Objections and Requests for a Hearing

Section 409(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348(f)(1)) provides that, within 30 days after publication of an order relating to a food additive regulation, any person adversely affected by such order may file objections, ''specifying with particularity the provisions of the order deemed objectionable, stating reasonable grounds therefor, and requesting a public hearing upon such objections.''

Under 21 CFR 171.110, objections and requests for a hearing are governed by part 12 (21 CFR part 12) of FDA's regulations. Under § 12.22(a), each objection must meet the following conditions: (1) Must be submitted on or before the 30th day after the date of publication of the final rule; (2) must be separately numbered; (3) must specify with particularity the provision of the regulation or proposed order objected to; (4) must specifically state each objection on which a hearing is requested; failure to request a hearing on an objection constitutes a waiver of the right to a hearing on that objection; and (5) must include a detailed description and analysis of the factual information to be presented in support of the objection if a hearing is requested; failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

Following publication of the final rule permitting the use of advantame as a non-nutritive sweetener and flavor enhancer in foods generally, except meat and poultry, we received 12 submissions with objections to the rule within the 30-day objection period. The majority of these submissions were letters expressing concern regarding one or more of the following issues: (1) Labeling of products containing advantame, and (2) advantame being mistaken for aspartame. A few of the letters also expressed general opposition to the final rule, or objected to the rule based on adverse effects believed to have been caused by aspartame, and not advantame. None of these letters requested a hearing, nor provided evidence in support of any of these objections that could be considered factual information (§ 12.22(a)(5)). Therefore, these objections do not justify the modification or revocation of the regulation. We will not discuss these submissions further.

There was one submission that raised a specific objection. The letter was from the Natural Resources Defense Council (NRDC) (letter to Docket No. FDA–2009–F–0303, June 20, 2014). The letter from NRDC did not request a hearing on their objection. Therefore, NRDC has waived its right to a hearing on their objection (see § 12.22(a)(4)). The only remaining question under § 12.24(a) is whether NRDC's objection, and the information submitted in support of the objection, establish that the regulation authorizing the use of advantame should be modified or revoked. As discussed in detail in section III, we have concluded that NRDC has not established a basis for modification or revocation of the regulation authorizing the use of advantame.

III. Analysis of Objection

The objection raised by NRDC asserts that FDA did not comply with section 409 of the FD&C Act in our evaluation of the advantame petition because, they claim, we did not conduct a fair evaluation of the data before the Agency as required by section 409(c)(3) of the FD&C Act and did not consider the relevant safety factors as required by section 409(c)(5). Specifically, NRDC states that advantame and the sweetener aspartame are structurally related and that FDA has stated that ''advantame actually contains a small amount of aspartame.'' NRDC asserts that when we were considering potential effects of advantame, we considered the health effects of aspartame but did not consider the potential impacts of advantame on the hypothalamus despite having evidence that aspartame significantly altered that part of the brain. In support of their claim, NRDC cites five animal studies that they state are in FDA's possession and indicate aspartame affects the hypothalamus. NRDC requests that since the brain tissues from the key advantame animal studies were preserved, FDA should withdraw its approval of advantame until those tissues are examined for alteration of the hypothalamus and the implications on a child's developing brain are fully considered. In addition, NRDC claims that we did not comply with Executive Order 13045 regarding protection of children from environmental health risks and safety risks by not assessing the safety of advantame on a child's brain development.

The issue of whether aspartame poses a risk of hypothalamic adverse effects, including endocrine dysfunction, was thoroughly addressed in the Commissioner's final decision on aspartame published in the **Federal Register** on July 24, 1981 (46 FR 38285). In that decision, the Commissioner affirmed the safety of aspartame as a nutritive sweetener and concluded that there is a reasonable certainty that human consumption of aspartame at projected consumption levels will not pose a risk to the brain, including endocrine function. We are not aware of any new relevant evidence to the contrary. NRDC has not provided any evidence that the effects on the hypothalamus in the aspartame studies they cited are toxicologically significant at the expected levels of intake of aspartame and, further, they have not provided evidence of the relevancy of this information to the safety of advantame.

We disagree with NRDC's characterization of the relationship between advantame and aspartame. While advantame is structurally related to aspartame, and aspartame is used as one of the starting chemicals in the manufacture of advantame, which is what FDA was referring to in the language quoted by NRDC, the two sweeteners are chemically different and are metabolized differently in the human body. When aspartame is consumed, it is metabolized into its two constituent amino acids, phenylalanine and aspartic acid, and a small amount of methanol. By contrast, the primary metabolite of advantame is the de-esterified form of advantame, namely N-[N-[3-(3-hydroxy-4-methoxyphenyl)propyl]-α-aspartyl]-L-phenylalanine. Because chemically these two sweeteners are different compounds, FDA's safety decision on advantame was based solely on studies conducted on advantame. Therefore, we did not consider the health effects of aspartame in our safety decision on advantame.

Regarding concerns about possible effects of advantame on the hypothalamus, the hypothalamus is involved with endocrine control via the pituitary gland. Therefore, any long-lasting hypothalamic changes would affect the pituitary gland. For this reason, we recommend in our guidance ''Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food'' that the pituitary gland from subchronic and long-term animal studies be assessed for treatment-related changes. Consistent with our guidance, the pituitary gland was one of the organs evaluated in the animal studies on advantame that were considered in the final rule, and there was no evidence of toxicologically significant changes.

As previously noted, NRDC has requested that we withdraw our approval of advantame until we examine the brain tissues from the key advantame animal studies that were preserved for alteration of the hypothalamus and fully consider the implications on a child's developing brain. NRDC has claimed that several studies on a different substance showed effects on the hypothalamus, but has not provided any information to support its view that additional histopathological examination of brain tissue samples is necessary to establish the safety of advantame. During our evaluation of the advantame petition, we thoroughly reviewed all of the data provided by the petitioner on the safety of advantame, including the results from a two-generation study in rats, a chronic (52-week) dog study, a 104-week mouse carcinogenicity study, and a combined 104-week rat carcinogenicity feeding study with in utero and chronic (52-week) phases, which included extensive histological evaluations of the brain, including the hypothalamus. In evaluating these studies, we applied the appropriate safety factors to extrapolate the findings from these animal studies to humans as required by section 409(c)(5) of the FD&C Act. We also considered the potential intake of advantame at both the mean and 90th percentile of consumption for various age groups, including children. Based on this exposure and toxicological information, the estimated levels of daily intake for even high consumers of advantame were far below (approximately 200 times) the acceptable daily intake level, establishing that advantame is safe for the general population, including children.

NRDC's objection to the advantame final rule does not provide any new evidence or identify any evidence that we overlooked in our evaluation that would call into question FDA's determination of safety for advantame. Moreover, NRDC has not provided a basis for concluding that the information we evaluated is inadequate to support a finding that the use of advantame as a non-nutritive sweetener in food is safe. Therefore, this objection does not provide a basis for us to reconsider our decision to issue the final rule on advantame.

IV. Summary and Conclusion

Section 409 of the FD&C Act requires that a food additive be shown to be safe before marketing. Under 21 CFR 170.3(i), a food additive is ''safe'' if ''there is a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.'' In our May 21, 2014, final rule approving the use of advantame, we concluded that the data presented by the petitioner to establish safety of the additive demonstrate that advantame is safe for its intended use in food.

The petitioner has the burden to demonstrate the safety of the additive to gain FDA approval. However, once we make a finding of safety, the burden shifts to an objector, who must come forward with evidence that calls into question our conclusion (see section 409(f)(1) of the FD&C Act). After evaluating the objection from NRDC, we have concluded that the objection does not provide any basis for us to reconsider our decision to issue the final rule permitting the use of advantame as a non-nutritive sweetener and flavor enhancer in foods generally, except meat and poultry. Accordingly, we are not making any changes in response to the objection.

Therefore, we have determined that the final rule should not be modified or revoked based on the objections. Thus, we are confirming May 21, 2014, as the effective date of the regulation.

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30144 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 860

[Docket No. FDA–2013–N–1529]

Medical Device Classification Procedures; Reclassification Petition: Content and Form; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations for petitioning for device reclassification to update mailing addresses for the petitions. This action is being taken to improve the accuracy of the regulations.

DATES: This rule is effective December 24, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy Pirt, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4438, Silver Spring, MD 20993–0002, 301–796–6254.

SUPPLEMENTARY INFORMATION: FDA is updating mailing addresses for device reclassification petitions (21 CFR 860.123). For devices regulated by the Center for Devices and Radiological Health, the room number is now 4438. In addition, the Center for Biologics Evaluation and Research has moved to a new location at FDA's White Oak Campus. The address remains the same for the Center for Drug Evaluation and Research. The regulations are being amended to ensure clarity and to improve the accuracy and readability of the regulations.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment and a delayed effective date are unnecessary because these corrections are nonsubstantive.

List of Subjects in 21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 860 is amended as follows:

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

■ 1. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

■ 2. Revise § 860.123(b)(1) to read as follows:

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(1) For devices regulated by the Center for Devices and Radiological Health, addressed to the Food and Drug Administration, Center for Devices and Radiological Health, Regulations Staff, 10903 New Hampshire Ave., Bldg. 66, Rm. 4438, Silver Spring, MD 20993–0002; for devices regulated by the Center for Biologics Evaluation and Research, addressed to the Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G112, Silver Spring, MD 20993–0002; for devices regulated by the Center for Drug Evaluation and Research, addressed to the Food and Drug Administration, Center for Drug Evaluation and Research, Central Document Control Room, 5901–B Ammendale Rd., Beltsville, MD 20705–1266, as applicable.

* * * * *

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30141 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9707]

RIN 1545–BM08

Filing of Form 5472

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the manner of filing Form 5472, ''Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.'' The final regulations affect certain 25-percent foreign-owned domestic corporations and certain foreign corporations that are engaged in a trade or business in the United States that are required to file Form 5472.

DATES: *Effective date:* These regulations are effective on December 24, 2014. *Applicability date:* For dates of applicability, see §§ 1.6038A–1(n)(2) and (n)(3) and 1.6038A–2(g).

FOR FURTHER INFORMATION CONTACT: Anand Desai at (202) 317–6939 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On June 6, 2014, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG–114942–14) in the **Federal Register** (79 FR 32687, 2014–26 IRB 1117) under sections 6038A and 6038C of the Internal Revenue Code (Code) (proposed regulations). The proposed regulations proposed removing a provision for timely filing Form 5472 separately from an income tax return that is untimely filed (''untimely filed return provision''). As a result, Form 5472 would be required to be filed in all cases only with the filer's income tax return for the taxable year by the due date (including extensions) of that return. No public hearing was requested or held. The Treasury Department and the IRS received two written comments on the proposed regulations, which are available at *www.regulations.gov*. After consideration of the comments, this Treasury decision adopts the proposed regulations, without substantive change, as final regulations.

Summary of Comments

One comment recommended that the ''untimely filed return provision'' be retained because the IRS may not timely receive the information required by Form 5472 if the untimely filed return provision is removed. The comment also recommended conforming changes to permit the filing of Form 5471, ''Information Return of U.S. Persons With Respect to Certain Foreign Corporations,'' and Form 8865, ''Return of U.S. Persons With Respect to Certain Foreign Partnerships,'' separately from an income tax return that is untimely filed.

The Treasury Department and the IRS decline to adopt this comment. The Treasury Department and the IRS have determined that tax administration generally is more efficient when forms (for example, Form 5471, Form 5472, and Form 8865) are filed with the filer's timely filed income tax return.

The second comment addressed issues unrelated to the proposed regulatory change. The final regulations do not incorporate the suggestions contained in this comment, which are outside the scope of the proposed regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Anand Desai, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.6038A–1 is amended by revising the third sentence of, and adding a new fourth sentence to, paragraph (n)(2), and adding a third sentence to paragraph (n)(3), to read as follows:

§ 1.6038A–1 General requirements and definitions.

* * * * *

(n) * * *

(2) *Section 1.6038A–2.* * * * Section 1.6038A–2(d) applies for taxable years ending on or after June 10, 2011. For taxable years ending on or after June 10, 2011, but before December 24, 2014, see § 1.6038A–2(e) as contained in 26 CFR part 1 revised as of April 1, 2014. * * *

(3) *Section 1.6038A–4.* * * * For taxable years ending before December 24, 2014, see § 1.6038A–4(a)(1) as contained in 26 CFR part 1 revised as of April 1, 2014.

* * * * *

§ 1.6038A–2 [Amended]

■ **Par. 3.** Section 1.6038A–2 is amended by:

■ 1. Removing paragraph (e).

■ 2. Redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g), respectively.

■ **Par. 4.** Section 1.6038A–4 is amended by revising paragraph (a)(1) to read as follows:

§ 1.6038A–4 Monetary penalty.

(a) * * *

(1) *In general.* If a reporting corporation fails to furnish the information described in § 1.6038A–2 within the time and manner prescribed in § 1.6038A–2(d), fails to maintain or cause another to maintain records as required by § 1.6038A–3, or (in the case of records maintained outside the United States) fails to meet the non-U.S. record maintenance requirements within the applicable time prescribed in § 1.6038A–3(f), a penalty of $10,000 shall be assessed for each taxable year with respect to which such failure occurs. The filing of a substantially incomplete Form 5472 constitutes a failure to file Form 5472. Where, however, the information described in § 1.6038A–2(b)(3) through (5) is not required to be reported, a Form 5472 filed without such information is not a substantially incomplete Form 5472.

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: December 8, 2014.

Mark J. Mazur,

Assistant Secretary for the Treasury (Tax Policy).

[FR Doc. 2014–30200 Filed 12–23–14; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2013–0694, FRL–9920–83-Region 4]

Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and 2006 $PM_{2.5}$ NAAQS; Correcting Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correcting amendment.

SUMMARY: On June 2, 2014, the Environmental Protection Agency (EPA) published a final rule in the **Federal Register** updating the Code of Federal Regulations (CFR) concerning the designations of areas for air quality planning purposes for the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) nonattainment areas. This correcting amendment corrects errors in the regulatory text of EPA's June 2, 2014, final rule related to the designations of the Macon, Georgia, and Rome, Georgia, areas for the 1997 Annual $PM_{2.5}$ NAAQS.

DATES: This final rule is effective December 24, 2014.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For further general information on this correcting amendment, contact Tiereny Bell, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bell may be reached by phone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION: This action corrects inadvertent errors in a rulemaking entitled ''Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS'' related to the designations of areas for air quality planning purposes for the 1997 and 2006 $PM_{2.5}$ NAAQS nonattainment areas published on June 2, 2014. *See* 79 FR 31566. In EPA's June 2, 2014, final rulemaking, EPA incorrectly identified ''Rome, Georgia: Floyd County'' as a nonattainment area in the regulatory table in 40 CFR 81.311 listing area designations for the 1997 Annual $PM_{2.5}$ NAAQS in the State of Georgia. EPA took final action on May 14, 2014 (effective June 13, 2014), to redesignate the Rome, Georgia $PM_{2.5}$ nonattainment area (Rome Area) as attainment for the 1997 Annual $PM_{2.5}$ NAAQS. *See* 79 FR 27493. The Rome Area is comprised of Floyd County in Georgia. In addition, in EPA's June 2, 2014, final rulemaking, EPA incorrectly identified ''Macon, Georgia: Bibb County and Monroe County (part)'' as a nonattainment area in the regulatory table in 40 CFR 81.311 listing area designations for the 1997 Annual $PM_{2.5}$ NAAQS in the State of Georgia. EPA took final action on May 13, 2014 (effective June 12, 2014), to redesignate the Macon, Georgia $PM_{2.5}$ nonattainment area (Macon Area) as attainment for the 1997 Annual $PM_{2.5}$ NAAQS. *See* 79 FR 27193. The Macon Area is comprised of Bibb County and a portion of Monroe County in Georgia. Today, EPA is correcting the inadvertent errors in EPA's June 2, 2014, rulemaking by changing the regulatory table in 40 CFR 81.311 to reflect that EPA has redesignated the Rome and Macon Areas as attainment for the 1997 Annual $PM_{2.5}$ NAAQS.

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment procedures are unnecessary for today's action because this action merely corrects the aforementioned inadvertent errors in the regulatory text and has no substantive impact on EPA's June 2, 2014, action. In addition, EPA can identify no particular reason why the public would be interested in having the opportunity to comment on this correction prior to this action being finalized because this correction action does not change or reopen EPA's redesignations of the Rome and Macon Areas for the 1997 Annual $PM_{2.5}$ NAAQS.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule merely corrects inadvertent errors in the regulatory text that incorrectly identified above. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects inadvertent errors in the regulatory text and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop an implementation plan under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

This rule also does not have Federalism implications because it 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 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: December 9, 2014.

Heather McTeer Toney,

Regional Administrator, Region 4.

40 CFR part 81 is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.311, the table entitled ''Georgia–1997 Annual $PM_{2.5}$ NAAQS'' is amended by:

■ a. Revising the entry for ''Floyd County'' under ''Rome, GA.''

■ b. Revising the entry for ''Bibb County and Monroe County (part)'' under ''Macon, GA.''

The revisions read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—1997 ANNUAL $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation[a]		Classification	
	Date[1]	Type	Date[2]	Type
* * * * * * *				
Rome, GA:				
Floyd County	6/13/2014	Attainment.		
Macon, GA:				
Bibb County	6/12/2014	Attainment.		
Monroe County (part)	6/12/2014	Attainment.		

GEORGIA—1997 ANNUAL $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
From the point where Bibb and Monroe Counties meet at U.S. Hwy 23/Georgia Hwy 98 follow the Bibb/Monroe County line westward 150′ from the U.S. Hwy 23/Georgia Hwy 87 centerline, proceed northward 150′ west of and parallel to the U.S. Hwy 23/Georgia Hwy 87 centerline to 33 degrees, 04 minutes, 30 seconds; proceed westward to 83 degrees, 49 minutes, 45 seconds; proceed due south to 150′ north of the Georgia Hwy 18 centerline, proceed eastward 150′ north of and parallel to the Georgia Hwy 18 centerline to 1150′ west of the U.S. Hwy 23/Georgia Hwy 87 centerline, proceed southward 1150′ west of and parallel to the U.S. Hwy 23/Georgia Hwy 87 centerline to the Monroe/Bibb County line; then follow the Monroe/B Bibb County line to 150′ west of the U.S. Hwy 23/G Georgia Hwy 87 centerline.				
* * * * * * *				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2014–30231 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2009–0927; FRL–9920–59–OAR]

RIN 2060–AR78

Greenhouse Gas Reporting Program: Addition of Global Warming Potentials to the General Provisions and Amendments and Confidentiality Determinations for Fluorinated Gas Production; 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** on December 11, 2014 (79 FR 73750). The final rule amends the general provisions of the Greenhouse Gas Reporting Rule to establish chemical-specific and default global warming potentials (GWPs) for a number of fluorinated greenhouse gases (F–GHGs) and fluorinated heat transfer fluids (F–HTFs). The rule also includes conforming changes to the provisions for the Electronics Manufacturing and Fluorinated Gas Production source categories.

DATES: Effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; email address: *GHGReporting@epa.gov.* For technical information, please go to the Greenhouse Gas Reporting Rule Program Web site at *http://www.epa.gov/ghgreporting/index.html.* To submit a question, select Rule Help Center, followed by Contact Us.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this correction will also be available through the WWW. Following signature, a copy of this action will be posted on the EPA's Greenhouse Gas Reporting Program rule Web site at *http://www.epa.gov/ghgreporting/index.html.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–28444 appearing on page 73750 in the **Federal Register** of Thursday, December 11, 2014, the following corrections are made:

§ 98.3 [Corrected]

■ 1. On page 73777, in the first column, in Subpart A—General Provisions, § 98.3 What are the general monitoring, reporting, recordkeeping, and verification requirements of this part?, amendatory instruction 3.d ‘‘Revising paragraphs (l) introductory text, (1)(1), and (1)(2) introductory text;’’ is corrected to read ‘‘Revising paragraph (l) introductory text, paragraph (1)(1) introductory text, and paragraph (1)(2) introductory text;’’

§ 98.93 [Corrected]

■ 2. On page 73785, in the first column, in Subpart I—Electronics Manufacturing, § 98.93 Calculating GHG emissions, amendatory instruction 8 ‘‘Section 98.93 is amended by revising paragraph (i)(2) to read as follows:’’ is corrected to read ‘‘Section 98.93 is amended by revising paragraph (i)(2) introductory text to read as follows:’’

Dated: December 17, 2014.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2014–30178 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0210; FRL–9920–23]

Zeta-cypermethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerances for residues of zeta-cypermethrin in or on alfalfa, forage and alfalfa, hay. FMC Corporation requested the amendment of the tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 24, 2014. Objections and requests for hearings must be received on or before February 23, 2015, 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–2014–0210, 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:

Susan Lewis, 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.*

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–2014–0210 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 February 23, 2015. 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–2014–0210, 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 May 23, 2014 (79 FR 29729) (FRL–9910–29), 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 3F8214) by FMC Corporation, 1735 Market St., Philadelphia, PA 19103. The petition requested EPA to amend the tolerances in 40 CFR 180.418 for residues of the insecticide zeta-cypermethrin, *S*-cyano (3-phenoxyphenyl) methyl (±))(cis-trans 3-(2–2-dichloroethenyl)-2,2 dimethylcyclopropanecarboxylate, in or on alfalfa, forage from 5.0 parts per million (ppm) to 15.0 ppm and alfalfa, hay from 15.0 ppm to 30.0 ppm. That document referenced a summary of the petition prepared by FMC Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Instead of the proposed tolerances in alfalfa hay at 30.0 ppm and alfalfa forage at 15.0 ppm, EPA is establishing these tolerances at 30 ppm and 15 ppm, respectively. The Agency establishes tolerances using whole numbers for tolerances of 10 ppm or more, per the Organization for Economic Cooperation and Development (OECD) User Guide ENV/JM/MONO(2011)2 for the OECD tolerance calculation procedure.

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 zeta-cypermethrin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with zeta-cypermethrin follows.

Zeta-cypermethrin is an enriched isomer of the pyrethroid insecticide cypermethrin. In addition, alpha-cypermethrin is also an enriched isomer of cypermethrin. Although cypermethrin, alpha-cypermethrin, and zeta-cypermethrin are separate active ingredients with different end-use products, they are included together in the hazard evaluation for the purpose of human health risk assessment. The toxicology database for the cypermethrins includes studies with cypermethrin and both of its enriched isomers, and is considered complete for the purpose of risk assessment.

The aggregate risk assessment for zeta-cypermethrin must consider potential exposure from all cypermethrins (*i.e.,* cypermethrin, alpha-cypermethrin, and zeta-cypermethrin), since the three active ingredients are considered to be essentially the same from the mammalian toxicity perspective. The revised tolerances associated with the increased use rate on alfalfa forage and hay have no impact on the existing dietary exposure assessment for the cypermethrins. Alfalfa forage and hay are livestock feed items that are not directly entered into the dietary exposure assessment. In addition, the increased tolerances in the alfalfa forage and hay will not have an impact on the existing livestock commodity tolerances; these tolerances were established at levels determined largely due to the potential for residues in other commodities (such as clover and trefoil) with higher tolerances and which also constitute a greater percentage of the estimated livestock diet for zeta-cypermethrin. Therefore, the proposed increased use rates on alfalfa grown for hay and forage will not result in the need to increase the tolerances in livestock commodities. Consequently, the previously conducted dietary exposure assessment will not be affected by the proposed increased use rate and corresponding tolerances for alfalfa hay and forage. Furthermore, the drinking water estimates used in the existing dietary exposure assessment are more protective (higher) than those recently estimated based on the proposed use pattern and using updated drinking water models.

In the final rule published in the **Federal Register** of December 7, 2012 (77 FR 72975) (FRL–9371–7), EPA established tolerances for residues of zeta-cypermethrin in multiple commodities. Since the publication of that final rule, the toxicity profile of zeta-cypermethrin has not changed and since the revised tolerances associated with the increased use rate on alfalfa forage and hay have no impact on the existing dietary and aggregate risk determinations, the risk assessments that supported the establishment of the zeta-cypermethrin tolerances published in the December 7, 2012 **Federal Register** final rule remain valid. Therefore, EPA is relying on those risk assessments in order to support the revised tolerances for zeta-cypermethrin in alfalfa forage and hay.

An updated aggregate risk assessment was not needed to support the proposed increased tolerances for residues in alfalfa forage and hay, since these are livestock feed items, and the increased tolerances will not result in a change in the previously estimated dietary (food and water) or residential exposure estimates for zeta-cypermethrin. For a detailed discussion of the aggregate risk assessments and determination of safety, please refer to the December 7, 2012 **Federal Register** final rule and its supporting documents, available at *http://www.regulations.gov in docket ID number EPA–HQ–OPP–2010–0472.* EPA is also relying on those supporting risk assessments and findings to support of this final rule.

Based on the risk assessments and information described in this unit, 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 zeta-cypermethrin residues. Further information can also be found in the document: ''Zeta-Cypermethrin—Human Health Risk Assessment to Support Increased Tolerances and Use Rate on Alfalfa Hay and Forage'' in docket ID number EPA–HQ–OPP–2014–0210.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate tolerance enforcement methods are available in Pesticide Analytical Manual (PAM) Volume II for determining residues of alpha-cypermethrin, cypermethrin, and zeta-cypermethrin in plant (Method I) and livestock (Method II) commodities. Both methods are gas chromatographic methods with electron-capture detection (GC/ECD), and have undergone successful Agency petition method validations (PMVs). These methods are not stereospecific; thus no distinction is made between residues of cypermethrin (all 8 stereoisomers), alpha-cypermethrin (enriched in 2 isomers), and zeta-cypermethrin (enriched in 4 isomers). The January 1994 Food and Drug Administration (FDA) PESTDATA database (PAM Volume I) indicates that residues of cypermethrin are completely recovered (≤80%) using multi-residue method sections 302 (Luke), 303 (Mills, Onley, and Gaither), and 304 (Mills fatty food).

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.

Currently established U.S. tolerances for cypermethrin, alpha-cypermethrin, and zeta-cypermethrin are included in the same part in title 40 of the Code of Federal Regulations (CFR), but have separate sections and different crops listed. There are multiple Codex MRLs for zeta-cypermethrin, but all are in conjunction with MRLs for total cypermethrin isomers (no MRLs have been established solely for zeta-cypermethrin). However, although the definitions differ formally, they are effectively harmonized since the tolerance-enforcement methods are not stereospecific, and thus do not distinguish between residues of cypermethrin, alpha-cypermethrin, and zeta-cypermethrin. For enforcement purposes, the same moiety is being regulated.

There is a Codex MRL established in alfalfa fodder at 30 ppm, which would be harmonized with the proposed tolerance in alfalfa hay. Codex has not established an MRL in alfalfa forage.

C. Response to Comments

One comment was received from the general public urging the Agency to tighten regulations for pesticides tolerances and uses. The commenter particularly addressed carcinogenic chemicals and their effects on children's health.

Cypermethrin is classified as a ''Possible human carcinogen'' based on the presence of benign tumors (lung adenomas) in an adequate mouse carcinogenicity study with cypermethrin. The presence of common benign tumors (lung adenomas), in one species (mice) and one sex (female), with no increase in the proportion of malignant tumors or decrease in the time-to-tumor occurrence, together with the lack of mutagenic activity, was not considered strong enough to warrant a linear or no-threshold approach to quantitation of human cancer risk. Quantification of risk using a non-linear approach (*i.e.,* acute population adjusted dose (aPAD), acute reference dose (aRfD)) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to cypermethrin. The Agency is using the acute dietary endpoint because, due to the rapid reversibility of the most sensitive neurotoxicity endpoint used for quantifying risks, there is no increase in hazard with increasing dosing duration; therefore, the acute dietary endpoint is protective of the endpoints from repeat dosing studies, including cancer dietary exposures.

No evidence of carcinogenicity was observed in carcinogenicity studies in rats with cypermethrin or in mice with alpha-cypermethrin. Carcinogenicity studies are not available for zeta-cypermethrin; however, based on the structural and toxicological similarities to alpha cypermethrin and cypermethrin the carcinogenic potential is expected to be similar. Therefore, the Agency considers conclusions regarding the carcinogenic potential of cypermethrin to be applicable to alpha-cypermethrin and zeta-cypermethrin.

The Agency has considered all the available data, including all available data concerning the potential for carcinogenicity and concluded after conducting a risk assessment, that there is a reasonable certainty that no harm will result from aggregate human exposure to zeta-cypermethrin. EPA gives special consideration to the potential susceptibility and exposures of infants and children to pesticide chemical residues and is confident that it has chosen endpoints, points of departure, and uncertainty factors that are protective for all populations, including infants and children, and that have a strong scientific foundation. In addition, there are ongoing efforts to develop data to gain more information concerning the potential sensitivity of infants and young children to pyrethroids as a class.

V. Conclusion

Therefore, tolerances are amended for residues of zeta-cypermethrin, *S*-cyano(3-phenoxyphenyl)methyl (±))(cis-trans3-(2–2-dichloroethenyl)-2,2dimethylcyclopropanecarboxylate, including its metabolites and degradates in or on alfalfa, forage at 15 ppm and alfalfa, hay at 30 ppm.

VI. Statutory and Executive Order Reviews

This action 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 action has been exempted from review under Executive Order 12866, this action 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 action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This action 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 action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (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 (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: December 10, 2014.

G. Jeffrey Herndon,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.418,place the entries ''Alfalfa, hay'' and ''Alfalfa, forage'' in alphabetical order in the table in paragraph (a)(2) and revise them to read as follows:

§ 180.418 Cypermethrin and isomers alpha-cypermethrin and zeta-cypermethrin; tolerances for residues.

(a) * * *

(2) * * *

Commodity	Parts per million
Alfalfa, forage	15
Alfalfa, hay	30
* * * * *	

* * * * *

[FR Doc. 2014–29788 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0717; FRL–9918–65]

Beauveria bassiana Strain ANT–03; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial insecticide *Beauveria bassiana* strain ANT–03 in or on all food commodities when used in accordance with label directions and good agricultural practices. Technology Sciences Group, Inc., agent for Anatis Bioprotection Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Beauveria bassiana* strain ANT–03.

DATES: This regulation is effective December 24, 2014. Objections and requests for hearings must be received on or before February 23, 2015, 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–2013–0717, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@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 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0717 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 February 23, 2015. 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–2013–0717, 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. Background and Statutory Findings

In the **Federal Register** of December 30, 2013 (78 FR 79359) (FRL–9903–69), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F8176) by Anatis Bioprotection Inc., 278, rang Saint-André, St.-Jacques-le-Mineur, Quebec J0J 1Z0, Canada. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Beauveria bassiana* strain ANT–03. That document referenced a summary of the petition prepared by the petitioner Technology Sciences Group, Inc. as agent for Anatis Bioprotection Inc., which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(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. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption 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. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that 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.''

III. Toxicological Profile

Consistent with 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 to *Beauveria bassiana* strain ANT–03. 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.

A full explanation of the data upon which EPA relied and a summary of its risk assessment based on that data can be found within the October 23, 2014 document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Beauveria bassiana* strain ANT–03.'' This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based upon that evaluation, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Beauveria bassiana* strain ANT–03. Therefore, an exemption from the requirement of a tolerance is established for residues of *Beauveria bassiana* strain ANT–03 in or on all food commodities when used in accordance with label directions and good agricultural practices.

IV. Other Considerations

An analytical method is not required for enforcement purposes for the reasons contained in the document entitled ''Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for *Beauveria bassiana* strain ANT–03,'' and because the EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

V. Statutory and Executive Order Reviews

This action establishes a tolerance exemption 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 action has been exempted from review under Executive Order 12866, this action 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 action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption 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 action 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 action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (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 (NTTAA) (15 U.S.C. 272 note).

VI. 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: November 5, 2014.

Marty Monell,

Acting 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. Add § 180.1328 to subpart D to read as follows:

§ 180.1328 Beauveria bassiana strain ANT–03; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Beauveria bassiana* strain ANT–03 in or on all food commodities, when applied as a microbial insecticide and used in accordance with label directions and good agricultural practices.

[FR Doc. 2014–30212 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[FRA–2008–0136, Notice No. 7]

RIN 2130–ZA12

Monetary Threshold for Reporting Rail Equipment Accidents/Incidents for Calendar Year 2015

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule maintains the rail equipment accident/incident monetary reporting threshold at $10,500 for railroad accidents/incidents involving property damage that occur during calendar year (CY) 2015 that FRA's accident/incident reporting regulations require to be reported to the agency. FRA is maintaining the reporting threshold at the CY 2014 level because, in part, wage data for the second-quarter of 2014, (the data used to calculate the threshold) was abnormally high due to retroactive payment of wage increases resulting from labor contract agreements affecting several railroads. FRA believes that the data does not accurately reflect the changes in labor costs for the second-quarter of 2014 and leads to an overinflated threshold calculation for CY 2015. In addition, FRA is maintaining the monetary threshold for CY 2015 at the CY 2014 level while it reexamines the method for calculating the monetary threshold it last updated in 2005.

DATES: This final rule is effective January 1, 2015.

FOR FURTHER INFORMATION CONTACT: Kebo Chen, Staff Director, U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS–22, Mail Stop 25, West Building 3rd Floor, Room W33–314, 1200 New Jersey Ave. SE., Washington, DC 20590 (telephone 202–493–6079); or Sara Mahmoud-Davis, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W33–435, 1200 New Jersey Ave. SE., Washington, DC 20590 (telephone 202–366–1118).

SUPPLEMENTARY INFORMATION:

Background

A ''rail equipment accident/incident'' is a collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material, greater than the reporting threshold for the year in which the event occurs. 49 CFR 225.19(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). 49 CFR 225.19(b), (c) and 225.21(a). Paragraphs (c) and (e) of 49 CFR 225.19 further provide that FRA will adjust the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents, if necessary, every year under the procedures outlined in appendix B to part 225 (Appendix B) to reflect any cost increases or decreases.

In this rule, FRA is keeping the monetary threshold for CY 2015, at $10,500, the same as the monetary threshold for CY 2014. FRA is maintaining the reporting threshold at the CY 2014 level, because, in part, wage data for the second-quarter of 2014 (the data used to calculate the threshold) was abnormally high due to large, lump sum retroactive payments of wage increases resulting from labor contract agreements affecting several railroads. FRA believes the data does not accurately reflect the changes in labor costs for CY 2014.

In addition to periodically reviewing and adjusting the annual threshold under Appendix B, FRA periodically amends its method for calculating the threshold. In 49 U.S.C. 20901(b) Congress requires that we base the threshold on publicly available information obtained from the Bureau of Labor Statistics (BLS), other objective government source, or be subject to notice and comment. In 1996 FRA adopted a new method for calculating the monetary reporting threshold for accidents/incidents. *See* 61 FR 60632, Nov. 29, 1996. In 2005, FRA again amended its method for calculating the reporting threshold because the BLS ceased collecting and publishing the railroad wage data used by FRA in the threshold calculation. Consequently, FRA substituted railroad employee wage data the Surface Transportation Board collected for the BLS data that was no longer collected (70 FR 75414, Dec. 20, 2005). In 2015, FRA intends to evaluate and amend, if appropriate, its method for calculating the monetary threshold for accident/incident reporting and, as a result, the formula utilized to calculate the threshold may change. FRA intends to reexamine its method for calculating the reporting threshold because, since 2005, new data sources and methodologies for calculating the threshold have become available and updating the formula to include these advances will ensure it appropriately reflects changes in equipment and labor costs.

Maintaining Current Reporting Threshold

Approximately one year has passed since FRA revised the rail equipment accident/incident reporting threshold (78 FR 77601, Dec. 24, 2013). Consequently, FRA reviewed the threshold, as 49 CFR 225.19(c) requires and found that costs for labor increased but costs for equipment decreased relative to one year ago. However, for the reasons explained above related to the wage data used to calculate the threshold, FRA has determined it will continue to use the current reporting threshold of $10,500, which applied to rail equipment accidents/incidents that occurred in calendar year 2014, to rail equipment accidents/incidents that occur in calendar year 2015.[1]

Notice and Comment Procedures

In this rule, FRA is maintaining the current monetary reporting threshold for the reasons explained above, and, under the final rule published December 20, 2005, 70 FR 75414. FRA has found this rule imposes no additional burden on any person, but rather is intended to provide a benefit by permitting the valid comparison of accident data over time. Accordingly, finding that notice and comment procedures are either impracticable, unnecessary, or contrary to the public interest, FRA is proceeding directly to a final rule.

As appropriate, FRA regularly recalculates the monetary reporting threshold using the formula published in Appendix B near the end of each calendar year. FRA attempts to use the most recent data available to calculate the updated reporting threshold prior to the next calendar year. FRA has found that issuing the rule no later than

[1] Although FRA is maintaining the reporting threshold at the 2014 level, for reference the specific inputs to the equation set forth in Appendix B of Part 225 (*i.e.,* Tnew = Tprior * [1 + 0.4(Wnew − Wprior)/Wprior + 0.6(Enew − Eprior)/100]) are:

Tprior = $10,500; Wnew = $29.64700; Wprior = $26.93344; Enew = 196.56667; Eprior = 197.23333.

Where: Tnew = New threshold; Tprior = Prior threshold (with reference to the threshold, ''prior'' refers to the previous threshold rounded to the nearest $100, as reported in the **Federal Register**); Wnew = New average hourly wage rate, in dollars; Wprior = Prior average hourly wage rate, in dollars; Enew = New equipment average Producer Price Index (PPI) value; Eprior = Prior equipment average PPI value. Using the above figures, the calculated new threshold, (Tnew) is $10,881.15, which would be rounded to the nearest $100 for a potential final new reporting threshold of $10,900.

December of each calendar year and making the rule effective on January 1, of the next year, allows FRA to use the most up-to-date data to calculate the reporting threshold and to compile data that accurately reflects rising wages and equipment costs. As such, FRA finds that it has good cause to make this final rule effective January 1, 2015.

Regulatory Impact

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

FRA evaluated this rule under existing policies and procedures, and determined it to be non-significant under both Executive Orders 12866 and 13563 in addition to DOT policies and procedures (44 FR 11034, Feb. 26, 1979).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy statement that formally establishes ''small entities'' are railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.*

FRA considers about 730 of the approximately 775 railroads in the United States small entities. FRA certifies this final rule will have no significant economic impact on a substantial number of small entities. To the extent that this rule has any impact on small entities, the impact will be neutral or insignificant. The frequency of rail equipment accidents/incidents, and, therefore, also the frequency of required reporting, is generally proportional to the size of the railroad. A railroad that employs thousands of employees and operates trains millions of miles is exposed to greater risks than one whose operation is substantially smaller. Small railroads may go for months at a time without having a reportable occurrence of any type, and even longer without having a rail equipment accident/incident. For example, current FRA data indicate that 1,912 rail equipment accidents/incidents were reported in 2009, with small railroads reporting 328 of them. Data for 2010 show that 1,903 rail equipment accidents/incidents were reported, with small railroads reporting 303 of them. In 2011, 2,022 rail equipment accidents/incidents were reported, and small railroads reported 307 of them. In 2012, 1,760 rail equipment accidents/incidents were reported, with small railroads reporting 292 of them. In 2013, 1,818 rail equipment accidents/incidents were reported, with small railroads reporting 302 of them. On average over those five calendar years, small railroads reported about 16% of the total number of rail equipment accidents/incidents, ranging from 15% to 17% annually. FRA notes that this data is accurate as of the date of issuance of this final rule, and are subject to minor changes due to additional reporting.

This rulemaking maintains the monetary reporting threshold at the CY 2014 level of $10,500. Increasing the reporting threshold would have potentially slightly decreased the reporting burden for railroads in 2015. In any case, railroads still maintain records of accountable accidents/incidents that are below the reporting threshold, thus minimizing any potential additional burden to report these accidents to FRA caused by keeping the threshold the same in CY 2015. Railroads would potentially incur a small reporting burden, but not the burden to gather this accident/incident information. Also, although wage rates have increased atypically, equipment costs have decreased during CY 2014 compared to the same time period in CY 2013, according to the average Producer Price Index Series WPU144 for group transportation equipment and item railroad equipment the Bureau of Labor Statistics published for April, May, and June 2014. Therefore, the overall effect of this rule likely will be neutral or minimal in effect. Any change in recordkeeping burden will not be significant and will affect the large railroads more than the small entities, due to the higher proportion of reportable rail equipment accidents/incidents experienced by large entities.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, FRA is not required to provide an estimate of a public reporting burden.

Federalism Implications

Executive Order 13132, entitled, ''Federalism,'' signed on August 4, 1999, requires that each agency ''in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provide[] to the Director of the Office of Management and Budget a federalism summary impact statement, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State and local officials have been met.'' FRA has analyzed this rulemaking action under the principles and criteria contained in Executive Order 13132. This rule will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in the Executive Order 13132. Accordingly, FRA has determined this rule will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Therefore, FRA has not prepared a federalism assessment.

Environmental Impact

FRA has evaluated this regulation under its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) requires, other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review under section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. Under section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

Unfunded Mandates Reform Act of 1995

Under Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. When adjusted for inflation using the Consumer Price Index for All Urban Consumers as the Bureau of Labor Statistics published, the equivalent value of $100,000,000 in year 2012 dollars is $151,000,000.[2] The final rule will not result in the expenditure, in the aggregate, of $151,000,000 or more in any one year, and thus preparation of such a statement is not required. Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as ''[a]ny action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) 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.'' FRA has evaluated this final rule under Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

[2] *See* U.S. Department of Transportation guidance at, ''Reform Act of 1995,'' February 24, 2014 (update), *http://www.dot.gov/office-policy/transportation-policy/threshold-significant-regulatory-actions-under-unfunded-mandates.*

List of Subjects in 49 CFR Part 225

Investigations, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA amends part 225 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 225—[AMENDED]

■ 1. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 225.19 by revising the first sentence of paragraph (c) and revising paragraph (e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(c) *Group II—Rail equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold (*i.e.,* $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, and $10,500 for calendar year 2015) to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * *

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(e) The reporting threshold is $6,700 for calendar years 2002 through 2005, $7,700 for calendar year 2006, $8,200 for calendar year 2007, $8,500 for calendar year 2008, $8,900 for calendar year 2009, $9,200 for calendar year 2010, $9,400 for calendar year 2011, $9,500 for calendar year 2012, $9,900 for calendar year 2013, $10,500 for calendar year 2014, and $10,500 for calendar year 2015. The procedure for determining the reporting threshold for calendar years 2006 and beyond appears as paragraphs 1–8 of appendix B to part 225.

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Issued in Washington, DC, on December 18, 2014.

Joseph C. Szabo,

Administrator.

[FR Doc. 2014–30113 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 130402316–4999–02]

RIN 0648–BD02

Vessel Monitoring Systems; Requirements for Enhanced Mobile Transceiver Unit and Mobile Communication Service Type-Approval

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule implementing regulations to codify type-approval standards, requirements, procedures, and responsibilities applicable to commercial Enhanced Mobile Transceiver Unit (EMTU) vendors and mobile communications service (MCS) providers seeking to obtain and maintain type-approval by NMFS for EMTU/MTU or MCS, collectively referred to as vessel monitoring systems (VMS), products and services. This rule is necessary to specify NMFS procedures for EMTU/MTU and MCS type-approval, type-approval renewal, and revocation; revise latency standards; and ensure compliance with type-approval standards.

DATES: This final rule is effective January 23, 2015.

ADDRESSES: Electronic copies of the Regulatory Impact Review, Final Regulatory Flexibility Analysis (FRFA), and other related documents are available by contacting the individuals listed below in the **FOR FURTHER INFORMATION CONTACT** section. Other documents relevant to this rule are available from the Office of Law Enforcement Web site at *http://www.nmfs.noaa.gov/ole/about/programs.html.*

FOR FURTHER INFORMATION CONTACT: Kelly Spalding, Vessel Monitoring

System Management Analyst, 301–427–8269; or Eric Teeters, Fishery Regulations Specialist, 301–427–8580.

SUPPLEMENTARY INFORMATION: Fishers must comply with applicable Federal fishery VMS regulations, and in doing so, may select from a variety of EMTU/MCS vendors who have been approved to participate in the VMS program for specific fisheries. Fishers may be cited for violations of the VMS regulations and held accountable for monitoring anomalies not attributable to faults in the EMTU or MCS. EMTUs and MCS must continue to meet the standards for type-approval throughout the service life of the VMS unit. Therefore, type-approval, latency requirements, periodic type-approval renewal, and procedures for revocation of type-approval(s) are essential to establish and maintain uniformly high VMS system integrity and ensure fishers have access to VMS that meet their needs. Regional Fishery Management Councils and NMFS have established VMS programs to support NMFS regulations requiring the use of VMS that typically are designed to manage fisheries resources and protect marine species and ecologically sensitive areas. VMS is also required on U.S. vessels fishing outside the U.S. EEZ pursuant to conservation and management measures adopted by international Regional Fishery Management Organizations to which the United States is a party.

The NMFS Office of Law Enforcement (OLE) maintains VMS specification requirements. On September 9, 2014, NMFS published and requested comments (79 FR 53386) for the proposed regulations that outline the rationale for the actions contained herein. The 45-day comment period on the proposed rule ended on October 24, 2014. A summary of the comments and the responses by NMFS are provided under the Comments and Responses section of this preamble.

Background

A brief summary of the background of this final action is provided below. A detailed review of the provisions of the proposed regulations, the alternatives, and the rationale for these regulations is provided in the preamble to the proposed rule (79 FR 53386, September 9, 2014). Those documents are incorporated by reference and their description of specific requirements and procedures are not repeated here. Additional information regarding, and the proposed rule itself, are available from the NMFS Office of Law Enforcement Web site (see **ADDRESSES**).

Through this final rule, NMFS is codifying procedures and requirements for initial type-approvals for EMTUs, MCS, or EMTU/MTU (''bundle'')(valid for 3 years); renewals of type-approvals; revocations of type-approvals; and appeals. NMFS will no longer issue new type-approvals for MTUs, only for EMTUs. However, as set forth in proposed 50 CFR 600.1512, all MTUs, EMTUs, MCSs, and bundles with valid type-approvals on the effective date of this rule will continue to be type-approved. If a type-approval date is more than 3 years old, the type-approval will expire February 23, 2015.

The final rule will codify the VMS type-approval process and standards, improve enforceability of the type-approval standards, and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards.

NMFS is implementing substantive requirements for EMTUs and MCS in 50 CFR 600.1502 through 600.1509. Failure to meet these requirements or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved will trigger a Notification Letter and potential revocation procedures. For initial type-approvals and renewals, the type-approval requestor (or holder, in the case of a renewal) will be required, among other things, to certify that the EMTU, MCS, or bundle complies with each requirement set out in 50 CFR 600.1502 through 600.1509, and applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which type-approval/renewal is sought. The final rule relaxes the latency standard, as well as implements procedures for revoking type-approvals, and sets up an appeals process for such type-approvals.

Lastly, this final rule revises existing regulations in the NMFS Greater Atlantic Region's VMS vendor and unit requirements at 50 CFR 648.9 that will otherwise overlap and conflict with the regulations herein. To eliminate this potential conflict in Federal regulations, this final rule revises the regulations at 50 CFR 648.9 so that the NMFS OLE Director will issue type-approvals for all NMFS regions, including the Greater Atlantic Region.

Comments and Responses

During the proposed rule comment period, NMFS received three comment letters with six unique comments. A summary of the relevant comments on the proposed rule is shown below with NMFS' response. All written comments submitted during the comment period can be found at *http://regulations.gov/* by searching for NOAA–NMFS–2014–0019–0002.

Comment 1: Support was expressed for the requirement in § 600.1513(c) that a type-approval renewal request letter include vessel position report statistics regarding the processing and transmitting of position reports to the VMS data processing center.

Response: NMFS agrees. By providing these data to NMFS, the type-approval holder will expedite the type-approval process.

Comment 2: For initial type-approval of EMTUs, NMFS should be required to complete its certification testing for marine electronics products in less than the 90 calendars days provided for in § 600.1501(d) of the proposed rule. The commenter believes the testing as outlined in the proposed rule could be completed in 30–40 hours and a response, with adequate documentation, should only take an additional 100–120 hours. Therefore, the commenter suggested the final rule should require NMFS to complete certification testing within 30 days.

Response: Testing of an EMTU for type-approval is conducted in multiple steps, including laboratory and field testing of hardware, software, and communications that may require weeks or months to complete. Requiring NMFS to complete testing within 30 days as suggested by the commenter would not allow NMFS OLE sufficient time to have all aspects of EMTU and communication operation evaluated thoroughly by experts to ensure the devices meet all requirements in all of the NMFS regions for which type-approval is requested. NMFS believes that certification should occur as quickly as possible and, in certain circumstances, NMFS may be able to complete the certification process in less than 90 calendar days, but cannot commit to doing so in all instances. The regulatory text in § 600.1501(d) of this final rule has been changed to reflect the expectation that NMFS will complete certification testing within 90 days of receipt of a complete type-approval request, unless additional time is needed for testing.

Comment 3: In proposed § 600.1502, there is a new requirement that type-approved vendors be able to parse out billing for various features, rather than simply billing customers only for the service they use, without regard for the type of service. A commenter stated that billing should be kept simple and does not need to have the detail and extra expense that parsed billing would require.

Response: The requirement for vendors to parse billing is to distinguish services billed to the government from services billed to fishermen. If additional polling, increased VMS position reports, or other services are required of the vendor by the government, then those services need to be billed to the government, not to fishermen. Thus this final rule requires that vendors parse billing clearly.

Comment 4: This commenter suggests 50 CFR 600.1508, which requires all VMS vendors to provide 24/7/365 customer service support, would increase fishermen's expenses. The commenter states this additional expense is unnecessary and would only solve a portion of the support issues since vendors do not have access to NOAA's data center, and cannot tell what issues are related to the equipment on the vessels. The commenter believes that additional technical and customer support to fishermen would best be provided by NOAA's OLE Helpdesk.

Response: The requirement for 24-hour customer support for VMS vendors to assist the fisherman in maintaining and repairing their EMTU/MTU, including timely responses to customer support requests, has been in place since January 31, 2008 (see 73 FR 5813). Prior to the January 2008 **Federal Register** notice, NMFS had required that VMS vendors provide some level of customer support, but not 24/7/365 support, as a condition of being type-approved. (see 70 FR 61941, October 27, 2005; 71 FR 3053, January 19, 2006). As such, this 24/7/365 requirement will not add any new or additional financial burden to fishers or VMS vendors, as this requirement has already been built into the vendors' costs for the service being provided to fishers since 2008. Additionally, it is important to note that customer service is provided by VMS vendors to the government as well as fishermen.

Comment 5: Reimbursement of the cost of an EMTU should also include reimbursing the cost of a generator if it is needed to power the EMTU. Also, special consideration should be made for cases when the installation of a generator may not be physically possible due to space or other vessel limitations. Please provide information about currently available resources for reimbursing the cost of an EMTU.

Response: The amount of power that is required to operate the EMTUs that are currently type-approved varies. Several of these EMTUs are operated with battery power on small center console vessels with very little space taken by the EMTU. The range of EMTUs that are currently type-approved provide fishermen with options to determine which EMTU best meets their needs for the fishery in which they participate and the specific characteristics of their vessel without requiring the use of a generator. For information about the EMTU reimbursement program, please go to *http://www.psmfc.org/program/vessel-monitoring-system-reimbursement-program-vms* or call the NOAA OLE VMS Helpdesk at 1–888–219–9228.

Comment 6: NMFS is already monitoring all fish that are caught and it is unfair to further burden fishers with the costs associated with putting cameras on every boat. These additional costs reduce fishers' income and drive up the cost of seafood.

Response: This rule does not directly impose any additional costs or monitoring on fishers or other sectors of the fishing industry; nor does it require the installation of cameras on every boat. This final rule will enable fishers to have increased confidence that EMTUs/MTUs that are type-approved will be capable of complying with type-approval standards established by NMFS.

Changes From the Proposed Rule

Based on public comment, the regulatory text at 50 CFR 600.1501(d) has been changed to read, ''Unless additional time is required for EMTU testing, NMFS OLE will notify the requestor within 90 days after receipt of a complete type-approval request as follows:''.

Based on public comment, the regulatory text at 50 CFR 600.1502(b) has been changed to provide further clarification that billing for messages and communications from an EMTU must be able to be parsed out to enable clear billing of costs to the government and to the owner of a vessel or EMTU, when necessary.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any Federal regulations.

The Final Regulatory Flexibility Analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a) of the Regulatory Flexibility Act (RFA), and incorporated the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and summary of the analyses completed to support the action.

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here. The full FRFA is included below.

Section 604(a)(1) of the RFA requires that the Agency describe the need for, and objectives of, the final rule. A description of the final action, why it is being considered, and the legal basis for this final action are summarized here and described in more detail in the preamble to the proposed rule. The current national process regarding VMS Type-Approval Standards do not adequately address the process for evaluating VMS performance, or procedures for improving VMS performance or revoking VMS type-approvals for failure to meet type-approval requirements at any time after initial approval. The purpose of the final action, therefore, is to codify the VMS type-approval process and standards, improve enforceability of the type-approval standards and better ensure all type-approved EMTU/MTUs and MCS remain in compliance with NMFS VMS type-approval standards. In addition, the final action specifies NMFS procedures for VMS type-approval renewal and revocation. The objective of the proposed action is to revise latency standards, improve the enforceability of the VMS type-approval standards, and to establish type-approval renewal and revocation processes.

Section 604(a)(2) of the RFA requires a summary of the significant issues raised by the public comments in response to the IRFA and statement of any changes made in the final rule as a result of such comments. NMFS received six unique public comments on the proposed rule and IRFA. A summary of these comments and the Agency's responses, including changes as a result of public comment, are included in the preamble above. For the reasons discussed in the response to Comment 2, NMFS is recognizing that initial EMTU type-approval testing and notification to the type-approval requestor may be made in less than 90 days, in some circumstances. As discussed in response to Comment 3, NMFS has provided further clarification about the meaning and purpose of parsing bills for VMS services. Otherwise, there are no substantive changes from the proposed rule as a result of these economic comments. The comments above did not alter the cost analysis in the FRFA and final rule.

Under Section 604(a)(4), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States. This rule will impact EMTU vendors and/or MCSP. The rule will directly apply to the existing six NMFS type-approved VMS equipment providers and any companies wishing to obtain VMS type-approval in the future. NMFS has received inquiries from three other companies about seeking type-approval in the past, but have not yet officially sought type-approval. Based on a review of company financial records, NMFS estimates approximately half of the current VMS equipment providers would not be considered small businesses under the SBA size standard for the satellite telecommunications industry. Of the remaining businesses, many of them are privately held businesses that do not publicly report annual revenues, so it is difficult for NMFS to definitively determine whether they are small businesses. NMFS therefore conservatively estimates that this rule will impact three to six small entities.

Section 604(a)(5) of the RFA requires that the Agency provide a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record. This rule will involve reporting, record keeping, and other compliance requirements for the type-approval application process, notifications for any substantive changes, litigation support, periodic renewal, and possibly responses to revocation notices.

The application process will require a vendor requesting type-approval of an EMTU, MCS, or bundle to make a written request to the NMFS. The written request will require the following information pertaining to the EMTU, MCS, or bundle: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; the vendor-approved business entities associated with the EMTU and its use; messaging functionality; position data formats and transmission standards; electronic form and messaging capabilities; details of the customer service that would be provided to NMFS; general durability and reliability of the unit; ability of the unit to comply with any additional requirements specified in the fishery-specific regulations for VMS implementation; and protection of personally identifying information and other protected information for the purchase or activation of an MTU or EMTU from disclosure. In addition, the application must include two EMTUs at no cost to the government for each NOAA region or Federal fishery for which the application is made for approximately 90 calendar days for testing and evaluation. Two EMTUs are needed for testing in each NMFS region or Federal fishery in order to quickly conduct in-office and field trials simultaneously. The application must also include thorough documentation, including EMTU fact sheets, installation guides, user manuals, any necessary interfacing software, satellite coverage, performance specifications, and technical support information. This application process will likely require engineering and product manager expertise for preparation of the application.

This rule will also require type-approval holders to notify NMFS within two calendar days of any substantive changes from the original submission for type-approval.

As a condition of type-approval, the type-approval holder will be required to provide technical and expert support for litigation to substantiate the EMTU, MCS, or bundle capabilities to establish NMFS OLE cases against potential violators, as needed. If the technology has been subject to prior scrutiny in a court of law, the type-approval applicant or holder will be required to provide a brief summary of the litigation and any court finding on the reliability of the technology.

Prior to the end of each 3 year type-approval period, a type-approval holder must request renewal of the type-approval and demonstrate successful compliance with the type-approval standards and requirements. To do so, the type-approval holder must certify that the EMTU, MCS, or bundle remains in compliance with type-approval standards and complete a table or matrix documenting compliance with all applicable standards. This type-approval renewal process will likely require engineering and product manager expertise for preparation of the renewal request.

If NMFS issues a Notification letter indicating intent to revoke a type-approval, the type-approval holder must respond, in writing, within 30 to 120 calendar days from the date specified in the NMFS Notification Letter if the vendor believes the Notification is in error or can propose a solution to correct the issue. This response will likely require engineering and product manager expertise to develop.

Section 604(a)(6) of the RFA requires a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes. Additionally, section 603(c) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

(1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) Use of performance rather than design standards; and,

(4) Exemptions from coverage of the rule for small entities. In order to meet the objectives of this action, consistent with all legal requirements, NMFS cannot exempt small entities or change the VMS type-approval process and standards only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. NMFS has strived to clarify and simplify the type-approval process by codifying the type-approval standards, specifications, procedures, and responsibilities for EMTU, MCS and bundle type-approval applicants and holders in this action. In addition, NMFS is implementing performance rather than design standard alternatives for messaging latency standards for EMTUs, MCSs or bundles.

NMFS analyzed several different alternatives in the proposed action and provides the rationale for identifying the preferred alternatives to achieve the desired objective.

Vessel Monitoring System Type-Approval Application Process

Requestors of type-approval must submit a written request to NMFS OLE and a statement that the unit for which approval is sought meets NMFS OLE's type-approval standards. The application process will likely require engineering and product manager expertise for preparation of the application. NMFS estimates that small entities will utilize up to approximately 40 hours engineering labor and 40 hours of product management labor to compile the written request and statement that details how the EMTU, MCS, or bundle meets the minimum national VMS standards as required by this rule. This estimate also includes the amount of time it would take to compile the documentation and the packaging of the EMTUs to ship to each NOAA region or Federal fisheries for which an application is submitted. Based on the Bureau of Labor Statistics May 2012 National Occupational Employment and Wage Estimates, the mean hourly wage for engineers is approximately $44 per hour and for general and operations managers it is approximately $55 per hour. Therefore, NMFS estimates the total wage costs to be approximately $3,960 per type-approval application.

Type-approval requestors will be required to send two EMTUs for testing to each NMFS region for which type-approval is sought. NMFS estimates that type-approval requestors will likely spend between $85 and $220 per NMFS region for shipping two units based on current ground shipping rates for a package of up to 30 pounds ($77.50–$210 depending on the region), box costs ($2.50), and packaging materials ($5.00). Some requestors may opt to use next day air delivery to expedite the process, which would increase the shipping costs to approximately $250 per package, but that option is not as economical. NMFS estimates that a vendor will send units to five different NOAA regional offices on average. Therefore, the total shipping cost per application is estimated to be $695, based on ground delivery costs of approximately $85 per region in the continental United States and $220 per region for the Alaska and the Pacific Islands offices.

The average cost of an EMTU unit is approximately $3,000. The vendor will be unable to sell the EMTU units as new after providing them to NMFS for testing and evaluation for 90-days. They might only get 60 to 80 percent of the regular retail value on refurbished units. Based on NMFS' estimate that 10 EMTUs that regularly retail for $3,000 new would be sent to 5 regional offices, the reduced retail revenue will total approximately $6,000 to $12,000 per type-approval application. Alternatively, the vendor may opt to use these units as demo units for trade shows and other marketing purposes and therefore considerably lower the costs of providing the evaluation units. It is difficult to estimate the exact costs associated with providing the units to NMFS given the uncertainty associated with what vendors would do with these EMTUs after the 90-day evaluation period.

Latency Requirement

NMFS considered three alternatives to the EMTU latency requirements. These alternatives include no change from the current requirement that 97 percent of each vendor's position reports during each specified 24-hour period must reach NMFS within 15 minutes, for ten out of eleven consecutive days; a 90-percent requirement; and a 50-percent requirement.

Based on NMFS OLE's review of several years of reports, NMFS has determined that the current 97-percent latency standard is not necessary to meet the needs of NMFS OLE and the USCG for near-real-time data. Also, the 97-percent latency standard requirement is the most costly for vendors to achieve. Based on several years of reports, it is clear this latency requirement is difficult for type-approval holders to achieve consistently. Several of the current EMTU type-approval holders would have to take significant corrective actions, at likely significant costs, to achieve the 97-percent standard. The possible corrective actions include deploying new satellites, switching out antennas on all units in order to switch to a more reliable network, or reengineering the communication software or backend hardware to ensure more reliable and efficient data transmission. These solutions would require significant capital investments, which would be particularly challenging to small entities. Some vendors might instead opt out of this market given the potentially significant costs. While the 97-percent requirement would achieve the objective of collecting reliable real-time data for enforcement of Federal fisheries laws and regulations, it is not the most cost effective alternative.

NMFS OLE and the U.S. Coast Guard (USCG) have a need for near-real-time fishing vessel location data for enforcement of Federal fisheries laws and regulations. Successful NMFS and USCG enforcement efforts depend on near-real-time vessel location data to responsibly protect resources. For example, NMFS and USCG need to know when a vessel has entered a closed area or other protected or environmentally sensitive area. Receipt of near real-time data also ensures optimal and cost-effective dispatch of enforcement assets for at-sea interception, landing inspections, follow-up, and active investigations of already-suspect vessels.

NMFS determined that the latency requirement can be lowered slightly to 90 percent and still maintain the integrity of the VMS program by providing near real-time data transmission. In light of these findings, NMFS is revising this latency requirement to state that NMFS must receive no less than 90 percent of all messages within 15 minutes or less of the EMTU timestamp, for 10 out of 11 consecutive days (24-hour time periods). This new latency requirement is less burdensome for all current type-approval holders. Also, the 90 percent latency standard requirement is a more cost effective alternative. NMFS, along with its USCG partner, believe that the 90-percent standard can meet the objective of providing near-real-time data on a consistent basis.

While the third alternative, a 50-percent requirement, would be the least burdensome alternative for VMS vendors to achieve, this standard does not meet the objective of providing near real-time VMS data on a consistent basis. VMS-reporting delays will result in less efficient use of government funds, personnel, and other assets. Delayed data delivery is detrimental to fishers as well. Fishers have been delayed in starting fishing trips because VMS latency prevented them from delivering notice to OLE via EMTU/MTU before leaving the dock, or a fisher's days-at-sea were miscalculated due to the delayed reporting of Demarcation-Line crossings. This may result in confusing documentation regarding when a vessel reported the required information via their EMTU, leading to administrative or legal complications. Delayed data delivery may also allow illegal or non-compliant vessel activity to go undetected, which impedes the VMS program's utility in the enforcement of fisheries laws and regulations. Finally, in order for VMS data to carry its proper weight as admissible evidence, the VMS unit must be reliable. Long latency periods draw into question the reliability of the unit and its data, altogether. For these reasons, NMFS has determined it is essential for VMS data to be delivered by the type-approved EMTU/MTUs, MCS and bundles in near real-time for enforcement purposes. Therefore, NMFS does not prefer the 50-percent standard.

Changes or Modifications to Type-Approvals

After a type-approval is issued, the type-approval holder must notify OLE no later than 2 calendar days following any substantive change in the original submission, such as changes to firmware, software or hardware versions, MCS operations or performance, or customer support contacts. Within 60 calendar days of the receipt of such notice, OLE will notify the type-approval holder if an amended type-approval will be required, including additional testing or provide notice that OLE will initiate the type approval revocation process. NMFS estimates that small entities would utilize up to approximately four hours engineering labor and four hours of product management labor to notify NMFS of any substantive changes to the original type-approval submission and provide the agency with the details of those changes. Based on the National Occupational Employment and Wage Estimates, NMFS estimates the total wage costs to be approximately $396 for the change notification process.

Renewal Process

NMFS considered three alternative periods of time for a type-approval renewal process: 1 year, 3 years, and 10 years. The renewal process would be identical for each of these alternatives, except for the frequency of type-approval renewal.

NMFS believes that a 1-year interval renewal process would result in too short of a renewal cycle because changes in technology are not rapid enough to warrant such a short renewal cycle and 1-year renewals would not provide sufficient time for vendors to maintain a stable service environment. A 1-year interval would also impose an undue burden on type-approval holders and OLE.

A 10-year type-approval renewal process is seen as too long an interval between the time an initial type-approval was issued and when NMFS would take an in-depth look at the type-approval holder's overall compliance record with the regulations set forth in this rule. Significant technological change might also occur over a 10-year period. While this alternative would minimize the economic impacts of preparing renewal applications, it does not meet NMFS objectives of maintaining compliance with the regulatory standards.

NMFS prefers that a type-approval be valid for a period of 3 years. As such, prior to the end of each 3-year period, an EMTU vendor may request renewal by demonstrating successful compliance with the requirements set forth in this final action.

NMFS estimates that this renewal process will involve up to 16 hours of engineering labor and 8 hours of product management labor to certify compliance with the type-approval standards and compile supporting materials. Based on the National Occupational Employment and Wage Estimates previously discussed, NMFS estimates the renewal process will result in up to $1,144 in labor costs. If the type-approval is not renewed by NMFS, the economic costs would be the same as those described below for the revocation process. NMFS estimates that there will be approximately two type-approval renewals conducted each year for a total economic cost of approximately $2,288 annually.

Revocation Process

If a type-approved EMTU/MTU, MCS, or bundle is no longer meeting one or more of the specifications set out in the type-approved standards, NMFS will initiate the type-approval revocation process. If an EMTU, MCS, or bundle fails to meet the type-approval standards in this rule, or if an MTU fails to meet the specifications under which it was type-approved, NMFS will issue a letter to the vendor who holds the type-approval and identify the potential violation. NMFS will set a Response Date between 30 and 120 calendar days from the date of the Notification Letter. If the vendor believes that NMFS is in error, and/or that NMFS has incorrectly defined/described the issue or its urgency and impact, or that NMFS is otherwise in error, then the vendor can deliver its Objection, in writing, before the Response Date. NMFS estimates that this revocation process would potentially involve 16 hours of engineering labor and 8 hours of product management labor to investigate the issues raised by NMFS and prepare a written response. Based on the wage costs previously discussed, NMFS estimates the revocation process could result in approximately $1,144 in labor costs. However, the actual amount of labor costs could vary considerably depending on the complexity of the issues causing the alleged failure NMFS identified. Some type approval holders may decide to not challenge the revocation or may be unable to bring the issue to final resolution to NMFS' satisfaction and then face the revocation of the type-approval for their product. The type-approval holder would then be impacted by the loss of future EMTU sales and monthly data communication fees from vessels required to carry and operate a type-approved EMTU/MTU, MCS, or bundle.

The type-approval holder could also opt to appeal the type-approval revocation. In addition to the costs associated with the engineering and product management support provided during the revocation process, the type-approval holder may also decide to employ legal counsel to challenge the agency's decision. These costs could vary considerably depending on the complexity of the appeal arguments.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. Copies of the compliance guide for this final rule are available (see **ADDRESSES**).

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 648

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR parts 600 and 648 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Add Subpart Q to read as follows:

Subpart Q—Vessel Monitoring System Type-Approval

Sec.

Subpart Q—Vessel Monitoring System Type-Approval

§ 600.1500 Definitions and acronyms.

In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, and the acronyms in § 600.15, the terms and acronyms in this subpart have the following meanings:

Authorized entity means a person, defined at 16 U.S.C. 1802(36), authorized to receive data transmitted by EMTU(s) or MTU(s).

Bench configuration means the EMTU's configuration after the manufactured unit has been customized to meet the Federal VMS requirements.

Bundle means an MCS and EMTU sold as a package and considered one product. If a bundle is type-approved, the requestor will be the type-approval holder for the bundled MCS and EMTU.

Communication class means the satellite communications operator from which satellite communications services originate.

Electronic form means a pre-formatted message transmitted by an EMTU that is required for the collection of data for a specific fishery program (*e.g.;* declaration system, catch effort reporting).

Enhanced Mobile Transceiver Unit (EMTU) means a type of MTU that is capable of supporting two-way communication, messaging, and electronic forms transmission via satellite. An EMTU is a transceiver or communications device, including: Antenna; dedicated message terminal and display; and an input device such as a tablet or keyboard installed on fishing vessels participating in fisheries with a VMS requirement.

Latency means the state of untimely delivery of Global Positioning System position reports and electronic forms to NMFS (*i.e.;* information is not delivered to NMFS consistent with timing requirements of this subpart).

Mobile Communications Service (MCS) means the satellite communications services affiliated with particular MTUs/EMTUs.

Mobile Communications Service Provider (MCSP) means the entity that sells VMS satellite communications services to end users.

Mobile Transmitter Unit (MTU) means a communication device capable of transmitting Global Positioning System position reports via satellite.

Notification Letter means a letter issued by NMFS to a type-approval holder identifying an alleged failure of an EMTU, MTU, MCS, or the type-approval holder to comply with requirements of this subpart.

Position report means the unique electronic Global Positioning System report generated by a vessel's EMTU or MTU, which identifies the vessel's latitude/longitude position at a point in time. Position reports are sent from the EMTU or MTU, via MCS, to authorized entities.

Requestor means a vendor seeking type-approval.

Service life means the length of time during which an EMTU/MTU remains fully operational with reasonable repairs.

Sniffing means the unauthorized and illegitimate monitoring and capture, through use of a computer program or device, of data being transmitted over a computer network.

Spoofing means the reporting of a false Global Positioning System position and/or vessel identity.

Time stamp means the time, in hours, minutes, and seconds in a position report. Each position report is time stamped.

Type-approval holder means a vendor whose type-approval request has been approved pursuant to this subpart.

Vendor means a commercial provider of VMS hardware, software, and/or mobile communications services.

Vessel Monitoring System (VMS) means, for purposes of this subpart, a satellite based system designed to monitor the location and movement of vessels using onboard EMTU or MTU units that send Global Positioning System position reports to an authorized entity.

Vessel Monitoring System (VMS) data means the data transmitted to authorized entities by an EMTU or MTU.

Vessel Monitoring System Program means the federal program that manages the vessel monitoring system, data, and associated program-components, nationally and in each NOAA region; it is housed in the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service's Office of Law Enforcement.

§ 600.1501 Vessel Monitoring System type-approval process.

(a) *Application submission.* A requestor must submit a written type-approval request and electronic copies of supporting materials that include the information required under this section to the NMFS Office of Law Enforcement (OLE) at: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, SSMC3, Suite 3301, Silver Spring, Maryland 20910.

(b) *Application requirements.* (1) EMTU and MCS Identifying Information: In a type-approval request, the requestor should indicate whether the requestor is seeking approval for an EMTU, MCS, or bundle and must specify identifying characteristics of the EMTU and MCS, as applicable: Communication class; manufacturer; brand name; model name; model number; software version and date; firmware version number and date; hardware version number and date; antenna type; antenna model number and date; tablet, monitor or terminal model number and date; MCS to be used in conjunction with the EMTU; entity providing MCS to the end user; and current satellite coverage of the MCS.

(2) Requestor-approved third party business entities: The requestor must provide the business name, address, phone number, contact name(s), email address, specific services provided, and geographic region covered for the following third party business entities:

(i) Entities providing bench configuration for the EMTU at the warehouse or point of supply.

(ii) Entities distributing/selling the EMTU to end users.

(iii) Entities currently approved by the requestor to install the EMTU onboard vessels.

(iv) Entities currently approved by the requestor to offer a limited warranty.

(v) Entities approved by the requestor to offer a maintenance service agreement.

(vi) Entities approved by the requestor to repair or install new software on the EMTU.

(vii) Entities approved by the requestor to train end users.

(viii) Entities approved by the requestor to advertise the EMTU.

(ix) Entities approved by the requestor to provide other customer services.

(3) Regulatory Requirements and Documentation: In a type-approval request, a requestor must:

(i) Identify the NOAA region(s) and/or Federal fisheries for which the requestor seeks type-approval.

(ii) Include copies of, or citation to, applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries identified under paragraph (b)(3)(i) of this section that require use of VMS.

(iii) Provide a table with the type-approval request that lists in one column each requirement set out in §§ 600.1502–600.1509 and regulations described under paragraph (b)(3)(ii) of this section. NMFS OLE will provide a template for the table upon request. The requestor must indicate in subsequent columns in the table:

(A) Whether the requirement applies to the type-approval; and

(B) Whether the EMTU, MCS or bundle meets the requirement.

(iv) Certify that the features, components, configuration and services of the requestor's MTU, EMTU, MCS or bundle comply with each requirement set out in §§ 600.1502–600.1509 and the regulations described under paragraph (b)(3)(ii) of this section.

(v) Certify that, if the request is approved, the requestor agrees to be responsible for ensuring compliance with each requirement set out in §§ 600.1502–600.1509 and the regulations described under paragraph (b)(3)(ii) of this section over the course of the type-approval period.

(vi) Provide NMFS OLE with two EMTUs loaded with forms and software for each NOAA region or Federal fishery, with activated MCS, for which a type-approval request is submitted for a minimum of 90 calendar days for testing and evaluation. Copies of forms currently used by NMFS are available upon request. As part of its review, NMFS OLE may perform field tests and at-sea trials that involve demonstrating every aspect of EMTU and communications operation. The requestor is responsible for all associated costs including paying for: Shipping of the EMTU to the required NMFS regional offices or headquarters for testing; the MCS during the testing period; and shipping of the EMTU back to the vendor.

(vii) Provide thorough documentation for the EMTU or MTU and MCS, including: EMTU fact sheets; installation guides; user manuals; any necessary interfacing software; satellite coverage; performance specifications; and technical support information.

(c) *Interoperability.* A requestor seeking type-approval of an EMTU within a communications class, as opposed to type-approval for use with a specific MCS, shall certify that the EMTU meets requirements under this subpart when using at least one qualified MCSP within the same communications class.

(d) *Notification.* Unless additional time is required for EMTU testing, NMFS OLE will notify the requestor within 90 days after receipt of a complete type-approval request as follows:

(1) If a request is approved or partially approved, NMFS OLE will provide notice as described under § 600.1510.

(i) The type-approval letter will serve as official documentation and notice of type-approval.

(ii) NMFS will also publish a notice in the **Federal Register** documenting the type-approval and the dates for which it is effective.

(2) If a request is disapproved or partially disapproved:

(i) OLE will send a letter to the requestor that explains the reason for the disapproval/partial disapproval.

(ii) The requestor may respond to NMFS OLE in writing with additional information to address the reasons for disapproval identified in the NMFS OLE letter. The requestor must submit this response within 21 calendar days of the date of the OLE letter sent under paragraph (d)(2)(i) of this section.

(iii) If any additional information is submitted under paragraph (d)(2)(ii) of this section, NMFS OLE, after reviewing such information, may either take action under paragraph (d)(1) of this section or determine that the request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the requestor that explains the reasons for the continued disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1502 Communications functionality.

(a) An EMTU must comply with the following requirements:

(1) Be able to transmit all automatically-generated position reports.

(2) Provide visible or audible alarms onboard the vessel to indicate malfunctioning of the EMTU.

(3) Be able to disable non-essential alarms in non-Global Maritime Distress and Safety System (GMDSS) installations.

(4) Be able to send communications that function uniformly throughout the geographic area(s) covered by the type-approval.

(5) Have two-way communications between authorized entities and EMTU via MCS.

(6) Have the capacity to send and receive electronic forms and Internet email messages.

(7) Have messaging and communications that are completely compatible with NMFS vessel monitoring software.

(b) In addition, messages and communications from an EMTU must be able to be parsed out to enable clear billing of costs to the government and to the owner of a vessel or EMTU, when necessary. Also, the costs associated with position reporting and the costs associated with other communications (for example, personal email or communications/reports to non-NMFS Office of Law Enforcement entities) must be parsed out and billed to separate parties, as appropriate.

§ 600.1503 Position report data formats and transmission.

An EMTU, MCSP, or bundle must comply with the following requirements, in addition to providing position information as required by the applicable VMS regulations and requirements in effect for each fishery or region for which the type-approval applies:

(a) An EMTU must be able to transmit all automatically-generated position reports, for vessels managed individually or grouped by fleet, that meet the latency requirement under § 600.1504.

(b) When an EMTU is powered up, it must automatically re-establish its position reporting function without manual intervention.

(c) Position reports must contain all of the following:

(1) Unique identification of an EMTU within the communications class.

(2) Date (year/month/day with century in the year) and time stamp (GMT) of the position fix.

(3) Position fixed latitude and longitude, including the hemisphere of each, which comply with the following requirements:

(i) The position fix precision must be to the decimal minute hundredths.

(ii) Accuracy of the reported position must be within 100 meters.

(d) An EMTU must have the ability to:

(1) Store 1000 position fixes in local, non-volatile memory.

(2) Allow for defining variable reporting intervals between 5 minutes and 24 hours.

(3) Allow for changes in reporting intervals remotely and only by authorized users.

(e) An EMTU must generate specially identified position reports upon:

(1) Antenna disconnection.

(2) Loss of positioning reference signals.

(3) Loss of the mobile communications signals.

(4) Security events, power-up, power down, and other status data.

(5) The vessel crossing a pre-defined geographic boundary.

(6) A request for EMTU status information such as configuration of programming and reporting intervals.

§ 600.1504 Latency requirement.

(a) Ninety percent of all pre-programmed or requested Global Positioning System position reports during each 24-hour period must reach NMFS within 15 minutes or less of the EMTU/MTU timestamp, for 10 out of 11 consecutive days (24-hour time periods).

(b) NMFS will continually examine position reports by region and by type-approval holder.

(c) Exact dates for calculation of latency will be chosen by NMFS. Days in which isolated and documented system outages occur will not be used by NMFS to calculate a type-approval holder's latency.

§ 600.1505 Messaging.

An EMTU must provide for the following capabilities:

(a) Messaging from vessel to shore, and from shore to vessel by authorized entities, must have a minimum supported message length of 1kb.

(b) There must be a confirmation of delivery function that allows a user to ascertain whether a specific message was successfully transmitted to the MCS email server(s).

(c) Notification of failed delivery to the EMTU must be sent to the sender of the message. The failed delivery notification must include sufficient information to identify the specific message that failed and the cause of failure (*e.g.;* invalid address, EMTU switched off, etc.).

(d) The EMTU must have an automatic retry feature in the event that a message fails to be delivered.

(e) The EMTU user interface must:

(1) Support an ''address book'' capability and a function permitting a ''reply'' to a received message without re-entering the sender's address.

(2) Provide the ability to review by date order, or by recipient, messages that were previously sent. The EMTU terminal must support a minimum message history of 50 sent messages—commonly referred to as an ''Outbox'' or ''Sent'' message display.

(3) Provide the ability to review by date order, or by sender, all messages received. The EMTU terminal must support a minimum message history of at least 50 messages in an inbox.

§ 600.1506 Electronic forms.

(a) An EMTU and its forms software must support a minimum of 20 Electronic Forms, and meet the following requirements:

(1) Form Validation: Each field on a form must be capable of being defined as Optional, Mandatory, or Logic Driven. Mandatory fields are those fields that must be entered by the user before the form is complete. Optional fields are those fields that do not require data entry. Logic driven fields have their attributes determined by earlier form selections. Specifically, a logic driven field must allow for selection of options in that field to change the values available as menu selections on a subsequent field within the same form.

(2) A user must be able to select forms from a menu on the EMTU.

(3) A user must be able to populate a form based on the last values used and ''modify'' or ''update'' a prior submission without unnecessary re-entry of data. A user must be able to review a minimum of 20 past form submissions and ascertain for each form when the form was transmitted and whether delivery was successfully sent to the type-approval holder's VMS data processing center. In the case of a transmission failure, a user must be provided with details of the cause and have the opportunity to retry the form submission.

(4) VMS Position Report: Each form must capable of including VMS position data, including latitude, longitude, date and time. Data to populate these fields must be automatically generated by the EMTU and unable to be manually entered or altered.

(5) Delivery Format for Form Data: Delivery of form data to NMFS must employ the same transport security and reliability as VMS position and declaration reports. The SMTP protocol is not permitted for the transmission of data that is delivered to NMFS. The field coding within the data must follow either CSV or XML formatting rules. For CSV format the form must contain an identifier and the version number, and then the fields in the order defined on the form. In the CSV format strings that may contain '','' (comma) characters must be quoted. XML representations must use the field label to define the XML element that contains each field value.

(b) *Updates to Forms.* (1) The EMTU and MCS must be capable of providing updates to forms or adding new form requirements via wireless transmission and without manual installation.

(2) From time to time, NMFS may provide type-approved vendors with requirements for new forms or modifications to existing forms. NMFS may also provide notice of forms and form changes through the NMFS Work Order System. Type-approved vendors will be given at least 60 calendar days to complete their implementation of new or changed forms. Vendors will be capable of, and responsible for translating the requirements into their EMTU-specific forms definitions and wirelessly transmitting the same to all EMTU terminals supplied to fishing vessels.

§ 600.1507 Communications security.

Communications between an EMTU and MCS must be secure from tampering or interception, including the reading of passwords and data. The EMTU and MCS must have mechanisms to prevent to the extent possible:

(a) Sniffing and/or interception during transmission from the EMTU to MCS.

(b) Spoofing.

(c) False position reports sent from an EMTU.

(d) Modification of EMTU identification.

(e) Interference with GMDSS or other safety/distress functions.

(f) Introduction of malware, spyware, keyloggers, or other software that may corrupt, disturb, or disrupt messages, transmission, and the VMS system.

(g) The EMTU terminal from communicating with, influencing, or interfering with the Global Positioning System antenna or its functionality, position reports, or sending of position reports. The position reports must not be altered, corrupted, degraded, or at all affected by the operation of the terminal or any of its peripherals or installed-software.

§ 600.1508 Customer service.

The type-approval holder is responsible for ensuring that customer service includes:

(a) Diagnostic and troubleshooting support to NMFS and fishers, which is available 24 hours a day, seven days per week, and year-round.

(b) Response times for customer service inquiries that shall not exceed 24 hours.

(c) Warranty and maintenance agreements.

(d) Escalation procedures for resolution of problems.

(e) Established facilities and procedures to assist fishers in maintaining and repairing their EMTU/MTUs.

(f) Assistance to fishers in the diagnosis of the cause of communications anomalies.

(g) Assistance in resolving communications anomalies that are traced to the EMTU/MTU.

(h) Assistance to NMFS Office of Law Enforcement and its contractors, upon request, in VMS system operation, resolving technical issues, and data analyses related to the VMS Program or system. Such assistance will be provided free of charge unless otherwise specified in NMFS-authorized service or purchase agreements, work orders or contracts.

§ 600.1509 General.

(a) An EMTU must have the durability and reliability necessary to meet all requirements of §§ 600.1502–600.1507 regardless of weather conditions, including when placed in a marine environment where the unit may be subjected to saltwater (spray) in smaller vessels, and in larger vessels where the unit may be maintained in a wheelhouse. The unit, cabling and antenna must be resistant to salt, moisture, and shock associated with sea going vessels in the marine environment.

(b) PII and Other Protected Information. Personally identifying information (PII) and other protected information includes Magnuson-Stevens Act confidential information as provided at 16 U.S.C. 1881a and Business Identifiable Information (BII), as defined in the Department of Commerce Information Technology Privacy Policy. A type-approval holder is responsible for ensuring that:

(1) All PII and other protected information is handled in accordance with applicable state and Federal law.

(2) All PII and other protected information provided to the type-approval holder by vessel owners or other authorized personnel for the purchase or activation of an MTU or EMTU or arising from participation in any federal fishery are protected from disclosure not authorized by NMFS or the vessel owner or other authorized personnel.

(3) Any release of PII or other protected information beyond authorized entities must be requested and approved in writing, as appropriate, by the submitter of the data in accordance with 16 U.S.C. 1881a, or by NMFS.

(4) Any PII or other protected information sent electronically by the type-approval holder to the NMFS Office of Law Enforcement must be transmitted by a secure means that prevents interception, spoofing, or viewing by unauthorized individuals.

§ 600.1510 Notification of type-approval.

(a) If a request made pursuant to § 600.1501 (type-approval) or § 600.1513 (renewal) is approved or partially approved, NMFS will issue a type-approval letter and publish a notice in the **Federal Register** to indicate the specific EMTU model, MCSP, or bundle that is approved for use, the MCS or class of MCSs permitted for use with the type-approved EMTU, and the regions or fisheries in which the EMTU, MCSP, or bundle is approved for use.

(b) The NMFS Office of Law Enforcement will maintain a list of type-approved EMTUs, MCSPs, and bundles on a publicly available Web site and provide copies of the list upon request.

§ 600.1511 Changes or modifications to type-approvals.

Type-approval holders must notify NMFS Office of Law Enforcement (OLE) in writing no later than 2 days following modification to or replacement of any functional component or piece of their type-approved EMTU/MTU configuration, MCS or bundle. If the changes are substantial, NMFS OLE will notify the type-approval holder in writing within 60 calendar days that an amended type-approval is required or that NMFS will initiate the type-approval revocation process.

§ 600.1512 Vessel Monitoring System type-approval period.

A type-approval or type-approval renewal is valid for a period of 3 years from the date of the **Federal Register** notice issued pursuant to § 600.1510, subject to the revocation process at § 600.1514. All MTUs, EMTUs, MCSs, and bundles with valid type-approvals on January 23, 2015 will continue to be type-approved. However, if the type-approval date is more than 3 years old, the type-approval will expire on February 23, 2015. The type-approval holder may request a type-approval renewal as provided in § 600.1513.

§ 600.1513 Type-approval renewal.

At least 30 days, but no more than six months, prior to the end of the type-approval period, a type-approval holder may seek a type-approval renewal by sending a written renewal request letter and information and documentation required under this section to: U.S. Department of Commerce; National Oceanic and Atmospheric Administration; National Marine Fisheries Service; Office of Law Enforcement; Attention: Vessel Monitoring System Office; 1315 East West Highway, Silver Spring, Maryland 20910.

(a) In a type-approval renewal request letter, the type-approval holder should indicate whether the holder is seeking renewal of an MTU, EMTU, MSC, or bundle and must:

(1) Identify the NOAA region(s) or Federal fisheries for which renewal is sought;

(2) Certify that the features, components, configuration and services of the type-approved MTU, EMTU, MCS or bundle remain in compliance with the standards set out in §§ 600.1502–600.1509 (or for an MTU, requirements applicable when the MTU was originally type-approved) and with applicable VMS regulations and requirements in effect for the region(s) and/or Federal fisheries identified under paragraph (a)(1) of this section that require use of VMS; and

(3) Certify that, since the type-approval or last renewal (whichever was later), there have been no modifications to or replacements of any functional component or piece of the type-approved configuration.

(b) The type-approval holder must include a table with the renewal request letter that lists in one column, each requirement set out in §§ 600.1502–600.1509 and regulations described under paragraph (a)(2) of this section. For an MTU, instead of the requirements at §§ 600.1502–600.1509, the table must list any requirements applicable when the MTU was originally type-approved. NMFS' Office of Law Enforcement (OLE) will provide a template for the table upon request. The type-approval holder must indicate in subsequent columns in the table:

(1) Whether the requirement applies to the type-approval;

(2) Whether the requirement is still being met;

(3) Whether any modifications or replacements were made to the type-approved configuration or process since type-approval or the last renewal;

(4) An explanation of any modifications or replacements that were made since type-approval or the last renewal; and

(5) The date that any modifications or replacements were made.

(c) If the type-approval renewal is for an MCS or bundle, the type-approval holder seeking renewal must also provide the following statistical information on the transmission and processing of vessel position reports from onboard EMTUs and MTUs to the MCS or MCSP's VMS data processing center.

(1) The statistical information will, at a minimum, show:

(i) Successful position report transmission and delivery rates;

(ii) The rate of position report latencies; and

(iii) The minimum/maximum/average lengths of time for those latencies.

(2) The statistical information will be demonstrated:

(i) In graph form;

(ii) For each NMFS region and any relevant international agreement area and relevant high seas area; and

(iii) Using data from six full and consecutive months for all of the type-approval holder's U.S. federal fishery customers.

(d) Within 30 days after receipt of a complete renewal request letter, NMFS OLE will notify the type-approval holder of its decision to approve or partially approve the request as provided in § 600.1510, or send a letter to the type-approval holder that explains the reasons for denial or partial denial of the request.

(e) The type-approval holder may respond to NMFS OLE in writing with additional information to address the reasons for denial or partial denial of the renewal request. The type approval holder must submit this response within 21 calendar days of the date of the NMFS OLE letter sent under paragraph (d) of this section.

(f) If any additional information is submitted under paragraph (e) of this section, NMFS OLE, after reviewing such information, may either notify the type-approval holder of its decision to approve or partially approve the renewal request as provided in § 600.1510 or determine that the renewal request should continue to be disapproved or partially disapproved. In the latter case, the NMFS OLE Director will send a letter to the type-approval holder that explains the reasons for the disapproval/partial disapproval. The NMFS OLE Director's decision is final upon issuance of this letter and is not appealable.

§ 600.1514 Type-approval revocation process.

(a) If at any time, a type-approved EMTU, MCS or bundle fails to meet requirements at §§ 600.1502–600.1509 or applicable VMS regulations and requirements in effect for the region(s) and Federal fisheries for which the EMTU or MCS is type-approved, or if an MTU fails to meet the requirements under which it was type-approved, the NMFS Office of Law Enforcement (OLE) may issue a Notification Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS or bundle that allegedly fails to comply with type-approval regulations and requirements;

(2) Identifies the alleged failure to comply with type-approval regulations and requirements, and the urgency and impact of the alleged failure;

(3) Cites relevant regulations and requirements under this subpart;

(4) Describes the indications and evidence of the alleged failure;

(5) Provides documentation and data demonstrating the alleged failure;

(6) Sets a Response Date by which the type-approval holder must submit to NMFS OLE a written response to the Notification Letter, including, if applicable, a proposed solution; and

(7) Explains the type-approval holder's options if the type-approval holder believes the Notification Letter is in error.

(b) NMFS will establish a Response Date between 30 and 120 calendar days from the date of the Notification Letter. The type-approval holder's response must be received in writing by NMFS on or before the Response Date. If the type-approval holder fails to respond by the Response Date, the type-approval will be revoked. At its discretion and for good cause, NMFS may extend the Response Date to a maximum of 150 calendar days from the date of the Notification Letter.

(c) A type-approval holder who has submitted a timely response may meet with NMFS within 21 calendar days of the date of that response to discuss a detailed and agreed-upon procedure for resolving the alleged failure. The meeting may be in person, conference call, or webcast.

(d) If the type-approval holder disagrees with the Notification Letter and believes that there is no failure to comply with the type-approval regulations and requirements, NMFS has incorrectly defined or described the failure or its urgency and impact, or NMFS is otherwise in error, the type-approval holder may submit a written Objection Letter to NMFS on or before the Response Date. Within 21 calendar days of the date of the Objection Letter, the type-approval holder may meet with NMFS to discuss a resolution or redefinition of the issue. The meeting may be in person, conference call, or webcast. If modifications to any part of the Notification Letter are required, then NMFS will issue a revised Notification Letter to the type-approval holder; however, the Response Date or any other timeline in this process would not restart or be modified unless NMFS decides to do so, at its discretion.

(e) The total process from the date of the Notification Letter to the date of final resolution should not exceed 180 calendar days, and may require a shorter time frame, to be determined by NMFS, depending on the urgency and impact of the alleged failure. In rare circumstances, NMFS, at its discretion, may extend the time for resolution of the alleged failure. In such a case, NMFS will provide a written notice to the type-approval holder informing him or her of the extension and the basis for the extension.

(f) If the failure to comply with type-approval regulations and requirements cannot be resolved through this process, the NMFS OLE Director will issue a Revocation Letter to the type-approval holder that:

(1) Identifies the MTU, EMTU, MCS, or bundle for which type-approval is being revoked;

(2) Summarizes the failure to comply with type-approval regulations and requirements, including describing its urgency and impact;

(3) Summarizes any proposed plan, or attempts to produce such a plan, to resolve the failure;

(4) States that revocation of the MTU/EMTU, MCS or bundle's type-approval has occurred;

(5) States that no new installations of the revoked unit will be permitted in any NMFS-managed fishery requiring the use of VMS;

(6) Cites relevant regulations and requirements under this subpart;

(7) Explains why resolution was not achieved;

(8) Advises the type-approval holder that:

(i) The type-approval holder may reapply for a type-approval under the process set forth in § 600.1501, and

(ii) A revocation may be appealed pursuant to the process under § 600.1515.

§ 600.1515 Type-approval revocation appeals process.

(a) If a type-approval holder receives a Revocation Letter pursuant to § 600.1514, the type-approval holder may file an appeal of the revocation to the NMFS Assistant Administrator.

(b) An appeal must be filed within 14 calendar days of the date of the Revocation Letter. A type-approval holder may not request an extension of time to file an appeal.

(c) An appeal must include a complete copy of the Revocation Letter and its attachments and a written statement detailing any facts or circumstances explaining and refuting the failures summarized in the Revocation Letter.

(d) The NMFS Assistant Administrator may, in his or her discretion, affirm, vacate, or modify the Revocation Letter and will send a letter to the type-approval holder explaining his or her determination, within 21 calendar days of receipt of the appeal. The NMFS Assistant Administrator's determination constitutes the final agency decision.

§ 600.1516 Revocation effective date and notification to vessel owners.

(a) Following issuance of a Revocation Letter pursuant to § 600.1514 and any appeal pursuant to § 600.1515, NMFS will provide notice to all vessel owners impacted by the type-approval revocation via letter and **Federal Register** notice. NMFS will provide information to impacted vessel owners on:

(1) The next steps vessel owners should take to remain in compliance with regional and/or national VMS requirements;

(2) The date, 60–90 calendar days from the notice date, on which the type-approval revocation will become effective;

(3) Reimbursement of the cost of a new type-approved EMTU, should funding for reimbursement be available pursuant to § 600.1518.

§ 600.1517 Litigation support.

(a) All technical aspects of a type-approved EMTU/MTU, MCS or bundle are subject to being admitted as evidence in a court of law, if needed. The reliability of all technologies utilized in the EMTU/MTU, MCS, or bundle may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance.

(b) The type-approval holder must, as a requirement of the holder's type-approval, provide technical and expert support for litigation to substantiate the EMTU, MCS or bundle capabilities to establish NMFS Office of Law Enforcement cases against violators, as needed. If the technologies have previously been subject to such scrutiny in a court of law, the type-approval holder must provide NMFS with a brief summary of the litigation and any court findings on the reliability of the technology.

(c) The type-approval holder will be required to sign a non-disclosure agreement limiting the release of certain information that might compromise the effectiveness of the VMS operations.

§ 600.1518 Reimbursement opportunities for revoked Vessel Monitoring System Type-approval products.

(a) Subject to the availability of funds, vessel owners may be eligible for reimbursement payments for a replacement EMTU if:

(1) All eligibility and process requirements specified by NMFS are met as described in NMFS Policy Directive 06–102; and

(2) The replacement type-approved EMTU is installed on the vessel, and reporting to NMFS Office of Law Enforcement; and

(3) The type-approval for the previously installed EMTU has been revoked by NMFS; or

(4) NMFS requires the vessel owner to purchase a new EMTU prior to the end of an existing unit's service life.

(b) The cap for individual reimbursement payments is subject to change. If this occurs, NMFS Office of Law Enforcement will publish a notice in the Federal announcing the change.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.9, revise paragraph (a) and paragraph (d) to read as follows:

§ 648.9 VMS vendor and unit requirements.

(a) *Approval.* The type-approval requirements for VMS MTUs and MCSPs for the Greater Atlantic Region are those as published by the NMFS Office of Law Enforcement (OLE) in the **Federal Register**, and are available upon request. Both the national type-approval requirements at 50 CFR part 600, subpart Q and any established regional standards must be met in order to receive approval for use in the Greater Atlantic Region. The NMFS OLE Director shall approve all MTUs, MCSPs, and bundles including those operating in the Greater Atlantic Region.

* * * * *

(d) *Revocations.* Revocation procedures for type-approvals are at 50 CFR 600.1514. In the event of a revocation, NMFS will provide information to affected vessel owners as explained at 50 CFR 600.1516. In these instances, vessel owners may be eligible for the reimbursement of the cost of a new type-approved EMTU should funding for reimbursement be available.

[FR Doc. 2014–30151 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 247

Wednesday, December 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede airworthiness directive (AD) 2012–09–09 that applies to all International Aero Engines AG (IAE) V2500–A1, V2525–D5, and V2528–D5 turbofan engines, and certain serial numbers (S/Ns) of IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines. AD 2012–09–09 currently requires cleaning, eddy current inspection (ECI) or fluorescent penetrant inspection (FPI), and initial and repetitive ultrasonic inspections (USIs) of certain high-pressure compressor (HPC) stage 3 to 8 drums, as well as replacement of the drum attachment nuts. Since we issued AD 2012–09–09, we discovered that additional attachment nuts for certain HPC stage 3 to 8 drums are affected. This proposed AD would expand the affected population for initial and repetitive USIs of the HPC stage 3 to 8 drum, revise the inspection intervals, require removal of the affected attachment nuts and any HPC stage 3 to 8 drum found cracked, and require a mandatory terminating action. We are proposing this AD to prevent failure of the HPC stage 3 to 8 drum, which could result in uncontained drum failure, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 23, 2015.

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

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

For service information identified in this NPRM, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 860–368–3700; fax: 860–368–4600; email: *iaeinfo@iaev2500.com;* Internet: *https://www.iaeworld.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2009–1100; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Martin Adler, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

On May 2, 2012, we issued AD 2012–09–09, Amendment 39–17044 (77 FR 30371, May 23, 2012), (''AD 2012–09–09''), for all IAE V2500–A1, V2525–D5, and V2528–D5 turbofan engines, and certain S/Ns of IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines. AD 2012–09–09 requires cleaning, ECI or FPI, and initial and repetitive USIs of certain HPC stage 3 to 8 drums, as well as replacement of the drum attachment nuts. AD 2012–09–09 resulted from inspections that found 50 HPC drums with cracks and reports that indicated that the required inspection intervals were not adequate. We issued AD 2012–09–09 to prevent uncontained failure of the HPC stage 3 to 8 drum, which could result in damage to the airplane.

Actions Since AD 2012–09–09 Was Issued

Since we issued AD 2012–09–09, we discovered that partially silver-plated nuts for certain HPC stage 3 to 8 drums cause the drum to corrode and crack. IAE has also developed a new nut design without silver plating.

Relevant Service Information

We reviewed IAE Alert Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–0615, Revision 6, dated September 4, 2014; IAE NMSB No. V2500–ENG–72–0625, dated September 20, 2011; and IAE NMSB No. V2500–ENG–72–0637, dated May 2, 2013. IAE Alert NMSB No. V2500–ENG–72–0615 describes procedures for performing a USI of the HPC stage 3 to 8 drum. IAE NMSB No. V2500–ENG–72–0625 provides guidance on performing an ECI that will improve the ability to detect cracked HPC stage 3 to 8 drums. IAE NMSB No. V2500–ENG–72–0637 describes procedures for performing an FPI of the HPC stage 3 to 8 drum.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would expand the affected population for initial and repetitive USIs of the HPC stage 3 to 8 drum, revise the inspection intervals, require removal of affected attachment nuts, and require removal of any HPC stage 3 to 8 drums found cracked. As mandatory terminating action, this proposed AD would require installation of an HPC stage 3 to 8 drum that has never operated with silver-plated nuts using silver-free nuts to attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

Costs of Compliance

We estimate that this proposed AD affects 956 engines installed on airplanes of U.S. registry. We estimate that it would take about 3 hours per engine to perform the USI and about 2 hours per engine to perform the FPI or ECI of the HPC stage 3 to 8 drum. We also estimate that removing silver residue from the HPC stage 3 to 8 drum would cost about $2,600 per engine, and required parts would cost about $1,060 per engine. We estimate the pro-rated replacement cost to replace an HPC stage 3 to 8 drum to be $52,014. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $53,630,644.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2012–09–09, Amendment 39–17044 (77 FR 30371, May 23, 2012), and adding the following new AD:

International Aero Engines AG: Docket No. FAA–2009–1100; Directorate Identifier 2009–NE–37–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 23, 2015.

(b) Affected ADs

This AD replaces AD 2012–09–09, Amendment 39–17044 (77 FR 30371, May 23, 2012).

(c) Applicability

This AD applies to:

(1) All International Aero Engines AG (IAE) V2500–A1 turbofan engines; and

(2) All IAE V2525–D5 and V2528–D5 turbofan engines; and

(3) IAE V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 turbofan engines with serial numbers (S/Ns) V10001 through V13190, and V15001 through V16728, excluding V16707.

(d) Unsafe Condition

This AD was prompted by the discovery that additional attachment nuts for certain HPC stage 3 to 8 drums cause the drum to corrode and crack. We are issuing this AD to prevent failure of the HPC stage 3 to 8 drum, which could result in uncontained drum failure, damage to the engine, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done. Use paragraph 3.A. of IAE Alert Non-Modification Service Bulletin (NMSB) No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014, to do the ultrasonic inspection (USI) required by this AD. You may use the inspections listed in paragraph (g)(3) of this AD instead of a USI for the initial inspection required by paragraphs (e)(1) through (e)(5) of this AD. If cracks are found during any of the inspections required by this AD, remove the drum from service before further flight.

(1) Initial USI of the HPC stage 3 to 8 drum—Group ''A'' and Group ''B'':

For IAE V2500–A1 turbofan engines with S/Ns listed in ''Group A'' or ''Group B'' in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014, perform an initial USI of the HPC stage 3 to 8 drum within 200 cycles of accumulating 8,000 cycles-since-new (CSN) or within 200 cycles from the effective date of this AD, whichever occurs later.

(2) Initial USI of the HPC stage 3 to 8 drum—Group ''C'':

For IAE V2500–A5 turbofan engines with S/Ns listed in ''Group C'' in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014, perform an initial USI of the HPC stage 3 to 8 drum within 200 cycles of accumulating 6,250 CSN or within 200 cycles from the effective date of this AD, whichever occurs later.

(3) Initial USI of the HPC stage 3 to 8 drum—Group ''D'':

For IAE V2500–A5 turbofan engines with S/Ns listed in ''Group D'' in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014, perform an initial USI of the HPC stage 3 to 8 drum within 200 cycles of accumulating 3,750 CSN or within 200 cycles from the effective date of this AD, whichever occurs later.

(4) Initial USI of the HPC stage 3 to 8 drum—Group ''E'':

For IAE V2500–A1, -A5, and –D5 turbofan engines not listed in ''Group A,'' ''Group B,'' ''Group C,'' or ''Group D,'' and with drum assembly part numbers (P/Ns) listed in ''Group E'' in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision

6, dated September 4, 2014, perform an initial USI of the HPC stage 3 to 8 drum within 200 cycles of accumulating 12,500 CSN or within 200 cycles from the effective date of this AD, whichever occurs later.

(5) Initial USI of the HPC stage 3 to 8 drum—Group ''F'':

For IAE V2500–A1, –A5, and –D5 turbofan engines not listed in ''Group A,'' ''Group B,'' ''Group C,'' or ''Group D,'' and with drum assembly P/Ns listed in ''Group F'' in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014, perform an initial USI of the HPC stage 3 to 8 drum within 200 cycles of accumulating 9,000 CSN or within 200 cycles from the effective date of this AD, whichever occurs later.

(f) Repetitive USIs of the HPC Stage 3 to 8 Drum

(1) For engines included in ''Group A,'' ''Group B,'' ''Group C,'' ''Group E,'' or ''Group F,'' as defined in paragraph (e) of this AD, perform repetitive USIs of the HPC stage 3 to 8 drum within every 750 cycles of the last USI.

(2) For engines included in ''Group D,'' as defined in paragraph (e) of this AD, perform repetitive USIs of the HPC stage 3 to 8 drum within every 500 cycles of the last USI.

(3) If you inspect the HPC stage 3 to 8 drum at shop visit, you may delay the next USI as shown in the ''Grace Periods Table'' for each compliance group listed in paragraph 1.E. in IAE Alert NMSB No. V2500–ENG–72–A0615, Revision 6, dated September 4, 2014.

(g) Removal of Silver-Plated Nuts

Unless already done, at the next piece-part exposure of the HPC stage 3 to 8 drum after the effective date of this AD, do the following before returning any HPC stage 3 to 8 drum to service:

(1) Remove from service all silver-plated nuts (fully or partially-plated), P/Ns AS44862 or AS64367, that attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

(2) Remove the silver residue from the HPC stage 3 to 8 drum.

(3) Perform an inspection of the HPC stage 3 to 8 drum using at least one of the following methods:

(i) Fluorescent penetrant inspection (FPI) of the HPC stage 3 to 8 drum for cracks, or

(ii) Eddy current inspection (ECI) of the HPC stage 3 to 8 drum for cracks.

(h) Installation Prohibition

After the effective date of this AD, do not install any silver-plated nuts, P/N AS44862 or AS64367, into any engine.

(i) Mandatory Terminating Action

Within 9,450 cycles after the effective date of this AD, install:

(1) an HPC stage 3 to 8 drum that has never operated with silver-plated nuts (fully or partially plated) to attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum, with

(2) silver-free nuts to attach the HPC stage 3 to 8 drum to the HPC stage 9 to 12 drum.

(j) Definition

For the purpose of this AD, ''piece-part exposure'' is removal of the HPC stage 3 to 8 drum from the engine, removal of all blades from the drum, and separation of the HPC stage 3 to 8 drum from the stage 9 to 12 drum.

(k) Credit for Previous Actions

If you performed an inspection of the HPC stage 3 to 8 drum before the effective date of this AD using one of the following IAE NMSBs, you met the initial inspection requirement of paragraph (e) of this AD:

(i) IAE NMSB No. V2500–ENG–72–0594, Revision 3, dated August 7, 2009, through Revision 6, dated April 12, 2010.

(ii) IAE NMSB No. V2500–ENG–72–0603, Revision 2, dated March 17, 2010, or earlier revisions.

(iii) IAE NMSB No. V2500–ENG–72–0608, Revision 3, dated September 20, 2011, or earlier revisions.

(iv) IAE NMSB No. V2500–ENG–72–0615, Revision 5, dated August 5, 2014, or earlier revisions.

(v) IAE NMSB No. V2500–ENG–72–0638, Initial Issue, dated April 11, 2013.

(l) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE–AD–AMOC@faa.gov.*

(m) Related Information

(1) For more information about this AD, contact Martin Adler, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7157; fax: 781–238–7199; email: *martin.adler@faa.gov.*

(2) IAE NMSB No. V2500–ENG–72–0637, dated May 2, 2013; IAE NMSB No. V2500–ENG–72–0625, dated September 20, 2011; IAE Engine Manual Task 72–41–11–200–001; and IAE Engine Manual Task 72–41–11–110–001, which are not incorporated by reference in this AD, can be obtained from IAE, using the contact information in paragraph (m)(3) of this proposed AD. IAE NMSB No. V2500–ENG–72–0637 and IAE Engine Manual Task 72–41–11–200–001 provide guidance on performing the FPI. Guidance on performing the ECI can be found in IAE NMSB No. V2500–ENG–72–0625. IAE Engine Manual Task 72–41–11–110–001 provides guidance on cleaning the HPC stage 3 to 8 drum.

(3) For service information identified in this AD, contact International Aero Engines AG, 400 Main Street, East Hartford, CT 06118; phone: 860–368–3700; fax: 860–368–4600; email: *iaeinfo@iaev2500.com;* Internet: *https://www.iaeworld.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 16, 2014.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–30194 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No. FAA–2014–0820]

Establishment of Policy Regarding Aircraft Dispatcher Certification Courses

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

ACTION: Notice of availability of proposed FAA Order 8900.1 Volume 3, Chapter 63, Aircraft Dispatcher Certification Courses and Proposed Advisory Circular (AC) 65–XX (Number to be Determined), FAA-Approved Aircraft Dispatcher Certification Courses—Availability of Additional Supporting Documents and Extension of Comment Period.

SUMMARY: This notice announces the availability of additional supporting documents and an extension of the comment period for the proposed policy applicable to Aircraft Dispatcher Certification Courses, which was published in this docket on October 22, 2014.

DATES: Extension of Comment Period. The comment period for the draft Aircraft Dispatcher Certification Course Policy published on October 22, 2014, which was scheduled to close on December 22, 2014, is hereby extended to February 22, 2015.

ADDRESSES: Send comments identified by docket number *FAA–2014–0820* using any of the following methods:

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

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

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theodora Kessaris, New Program Implementation and Technical Support Branch, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8166; facsimile: 202–267–5229; email: *Theodora.kessaris@faa.gov.*

Background

On October 22, 2014, the FAA published a proposed a new chapter of FAA Order 8900.1 and a proposed new AC related to Aircraft Dispatcher Certification Courses. The new chapter in FAA Order 8900.1 chapter establishes Policy not previously addressed in FAA Orders or ACs. The associated AC, 65–XX, provides guidelines to operators and potential operators of Aircraft Dispatcher Certification Courses. On November 06, 2014, Sheffield School of Aeronautics placed a comment in this docket requesting the publication of additional supporting documents which contain policy related to Designated Aircraft Dispatcher Examiners (DADE). Additionally, Sheffield requested the FAA consider extending the comment period, which is scheduled to close on December 22, 2014. In response to these requests, we have extended the comment period for the Aircraft Dispatcher Certification Course Policy contained in this docket for another 60 days to allow additional review by industry stakeholders. We have also made the DADE policy supporting documents available for review only, in their own respective docket, which is FAA–2011–1149. That particular docket, which is not open for comment, can be accessed at the following URL: *http://www.regulations.gov/#!docketDetail;D=FAA-2011-1149.*

The FAA does not anticipate any further extension of the comment period for the draft policy related to Aircraft Dispatcher Certification Courses, contained in this docket.

The agency will consider all comments received by February 22, 2015. Comments received after that date may be considered if consideration will not delay agency action on the review. A copy of the proposed order and AC is available for review in the assigned docket for the Order at *http://www.regulations.gov.*

Issued in Washington, DC, on December 15, 2014.

John Barbagallo,

Deputy Director, FAA Flight Standards Service.

[FR Doc. 2014–30221 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. FDA–2014–D–1856]

Human Cells, Tissues, and Cellular and Tissue-Based Products From Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; request for comments on draft guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry'' dated December 2014. The draft guidance document provides sponsors, clinicians, and other establishments that manufacture and use adipose tissue, with recommendations for complying with the regulatory framework for HCT/Ps. For purposes of applying the HCT/P regulatory framework, FDA considers connective tissue, including adipose tissue, to be a structural tissue. This draft guidance is not final nor is it in effect at this time.

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 February 23, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002 or to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002 or you may send an email request to the Office of Combination Products at *combination@fda.gov.* If you are submitting a written request, send one self-addressed adhesive label to assist that office in processing your request. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–7800. 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: Lori J. Churchyard, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911; or Angela Krueger, Office of Device Evaluation, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993–0002, 301–796–6380; or Leigh Hayes, Office of Combination Products, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5127, Silver Spring, MD 20993–0002, email: *combination@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps) from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry'' dated December 2014. FDA has recently received numerous inquiries regarding HCT/Ps from adipose tissues. This draft guidance document provides sponsors, clinicians, and other establishments that manufacture and use HCT/Ps from adipose tissue with the Agency's current thinking with respect to regulatory considerations for adipose tissue.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA'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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

The 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 Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 1271 have been approved under OMB control number 0910–0543.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. 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.*

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm* or *http://www.fda.gov/CombinationProducts/GuidanceRegulatoryInformation/default.htm* or *http://www.regulations.gov.* Persons unable to download an electronic copy of the draft guidance entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products from Adipose Tissue: Regulatory Considerations; Draft Guidance for Industry,'' may send an email request to *CDRH-guidance@fda.hhs.gov* to receive an electronic copy of the document.

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30142 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–1001]

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its safety zones regulations for Annual Events in the Captain of the Port Lake Michigan zone. This proposed amendment updates 18 permanent safety zones, adds 5 new permanent safety zones, and reformats the coordinates for safety zones. These amendments and additions are necessary to protect spectators, participants, and vessels from the hazards associated with annual maritime events, including fireworks displays, boat races, and air shows, and improves the precision and compatibility of safety zone coordinates.

DATES: Comments and related material must be received by the Coast Guard on or before January 23, 2015.

ADDRESSES: You may submit comments identified by docket number USCG–2014–1001 using any one of the following methods:

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

(2) Fax: 202–493–2251.

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

(4) Delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7148, email *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2014–1001), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2014–1001'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2014–1001 in the ''SEARCH'' box and click ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

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

4. Public Meeting

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

B. Regulatory History and Information

On March 4, 2014, the Coast Guard published a final rule entitled Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone in the **Federal Register** (79 FR 12064). This final rule published after the Coast Guard requested public comments in response to a preceding NPRM in the **Federal Register** (79 FR 2597, January 15, 2014). No public meeting was requested, and none was held.

C. Basis and Purpose

The legal basis for this proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

This proposed rule amends 18 permanent safety zones found within table 165.929 of 33 CFR 165.929. These 18 amendments involve updating the location, size, and/or enforcement times for: 13 fireworks displays in various locations; 1 regatta in Spring Lake, Michigan; 1 Air Show near Oshkosh, Wisconsin; 1 Air Show in Milwaukee, Wisconsin; 1 Vessel Launch Operation in Marinette, Wisconsin; and 1 high-speed boat race in Elgin, Illinois. The Coast Guard proposes to update the safety zones in § 165.929 to ensure that vessels and persons are protected from the specific hazards related to the aforementioned events. These specific hazards include obstructions to the waterway that may cause marine casualties; collisions among vessels maneuvering at a high speed within a channel; the explosive danger of fireworks; and flaming debris falling into the water that may cause injuries.

Additionally, this proposed rule adds 5 new safety zones to table 165.929 within § 165.929 for annually-reoccurring events in the Captain of the Port Lake Michigan Zone. These 5 zones were added in order to protect the public from the safety hazards previously described. The 5 additions include 4 safety zones for fireworks displays, and 1 safety zone for a ski show in the Fox River, Green Bay, Wisconsin.

In this proposed rule, the Coast Guard also changed the format of latitude/longitude coordinates for safety zones in Table 165.929 of § 165.929 from degrees, minutes, seconds to degrees with decimal minutes. This change of format was made in an effort to improve precision and make the information more compatible with currently-used, electronic positioning systems.

D. Discussion of Proposed Rule

The Captain of the Port Lake Michigan has determined that the safety zones in this proposed rule are necessary to ensure the safety of vessels and people during annual marine or triggering events in the Captain of the Port Lake Michigan zone. Although this proposed rule will be effective year-round, the safety zones in this proposed rule will be enforced only immediately before, during, and after events that pose a hazard to the public and only upon notice by the Captain of the Port Lake Michigan.

The Captain of the Port Lake Michigan will notify the public that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public, including publication in the **Federal Register**, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Lake Michigan or his or her designated representative. Entry into, transiting, or anchoring within the safety zones is prohibited unless authorized by the Captain of the Port or his or her designated representative. The Captain of the Port or his or her designated representative may be contacted via VHF Channel 16.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. Overall, we expect the economic impact of this proposed rule to be minimal and that a full Regulatory Evaluation is unnecessary.

2. Impact on Small Entities

Under The Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced.

These safety zones will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of these zones, we would issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of safety zones and is therefore categorically excluded under figure 2–1, paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.929 to read as follows:

§ 165.929 Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone.

(a) *Regulations.* The following regulations apply to the safety zones listed in Table 165.929 of this section.

(1) The general regulations in 33 CFR 165.23.

(2) All vessels must obtain permission from the Captain of the Port Lake Michigan or his or her designated representative to enter, move within, or exit a safety zone established in this section when the safety zone is enforced. Vessels and persons granted permission to enter one of the safety zones listed in this section must obey all lawful orders or directions of the Captain of the Port Lake Michigan or his or her designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel must proceed as directed.

(3) The enforcement dates and times for each of the safety zones listed in Table 165.929 are subject to change, but the duration of enforcement would remain the same or nearly the same total number of hours as stated in the table. In the event of a change, the Captain of the Port Lake Michigan will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

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

(1) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Lake Michigan to monitor a safety zone, permit entry into a safety zone, give legally enforceable orders to persons or vessels within a safety zone, and take other actions authorized by the Captain of the Port Lake Michigan.

(2) *Public vessel* means a vessel that is owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(3) *Rain date* refers to an alternate date and/or time in which the safety zone would be enforced in the event of inclement weather.

(c) *Suspension of enforcement.* The Captain of the Port Lake Michigan may suspend enforcement of any of these zones earlier than listed in this section. Should the Captain of the Port suspend any of these zones earlier than the listed duration in this section, he or she may make the public aware of this suspension by Broadcast Notice to Mariners and/or on-scene notice by his or her designated representative.

(d) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver.* For any vessel, the Captain of the Port Lake Michigan or his or her designated representative may waive any of the requirements of this section upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or security.

TABLE 165.929

Event	Location [1]	Enforcement date and time [2]
(a) March Safety Zones		
(1) St. Patrick's Day Fireworks	Manitowoc, WI. All waters of the Manitowoc River within the arc of a circle with a 250-foot radius from a center point launch position at 44° 05.492′ N, 087°39.332′ W.	The third Saturday of March; 5:30 p.m. to 7 p.m.
(2) Public Fireworks Display	Green Bay, WI. All waters of the Fox River in the vicinity of the Main Street and Walnut Street Bridge within an area bounded by the following coordinates; 44°31.211′ N, 088° 00.833′ W; then southwest along the river bank to 44°30.944′ N, 088°01.159′ W; then southeast to 44°30.890′ N, 088°01.016′ W; then northeast along the river bank to 44°31.074′ N, 088°00.866′ W; then northwest returning to the point of origin.	March 15; 11:50 a.m. to 12:30 p.m. Rain date: March 16; 11:50 a.m. to 12:30 p.m.
(b) April Safety Zones		
(1) Michigan Aerospace Challenge Sport Rocket Launch.	Muskegon, MI. All waters of Muskegon Lake, near the West Michigan Dock and Market Corp facility, within the arc of a circle with a 1500-yard radius from the rocket launch site located in position 43°14.018′ N, 086°15.585′ W.	The last Saturday of April; 8 a.m. to 4 p.m.
(2) Lubbers Cup Regatta	Spring Lake, MI. All waters of Spring Lake in Spring Lake, Michigan in the vicinity of Keenan Marina within a rectangle that is approximately 6,300 by 300 feet. The rectangle will be bounded by points beginning at 43°04.914′ N, 086°12.525′ W; then east to 43°04.958′ N, 086°11.104′ W; then south to 43°04.913′ N, 086°11.096′ W; then west to 43°04.867′ N, 086°12.527′ W; then north back to the point of origin.	April 11; 7:45 a.m. to 7 p.m., and April 12; 8:30 a.m. to 12:30 p.m.
(c) May Safety Zones		
(1) Tulip Time Festival Fireworks	Holland, MI. All waters of Lake Macatawa, near Kollen Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site in approximate center position 42°47.496′ N, 086°07.348′ W.	The first Saturday of May; 9:30 p.m. to 11:30 p.m. Rain date: The first Friday of May; 9:30 p.m. to 11:30 p.m.
(2) Cochrane Cup	Blue Island, IL. All waters of the Calumet Saganashkee Channel from the South Halstead Street Bridge at 41°39.442′ N, 087°38.474′ W; to the Crawford Avenue Bridge at 41°39.078′ N, 087°43.127′ W; and the Little Calumet River from the Ashland Avenue Bridge at 41°39.098′ N, 087°39.626′ W; to the junction of the Calumet Saganashkee Channel at 41°39.373′ N, 087°39.026′ W.	The first Saturday of May; 6:30 a.m. to 5 p.m.
(3) Rockets for Schools Rocket Launch.	Sheboygan, WI. All waters of Lake Michigan and Sheboygan Harbor, near the Sheboygan South Pier, within the arc of a circle with a 1500-yard radius from the rocket launch site located with its center in position 43°44.914′ N, 087°41.869′ W.	The first Saturday of May; 8 a.m. to 5 p.m.

TABLE 165.929—Continued

Event	Location [1]	Enforcement date and time [2]
(4) Celebrate De Pere Fireworks	De Pere, WI. All waters of the Fox River, near Voyageur Park, within the arc of a circle with a 500 foot radius from the fireworks launch site located in position 44°27.167′ N, 088°03.833′ W.	The Saturday or Sunday before Memorial Day; 8:30 p.m. to 10 p.m.
	(d) June Safety Zones	
(1) International Bayfest	Green Bay, WI. All waters of the Fox River, near the Western Lime Company 1.13 miles above the head of the Fox River, within the arc of a circle with a 1,000-foot radius from the fireworks launch site located in position 44°31.408′ N, 088°00.710′ W.	The second Friday of June; 9 p.m. to 11 p.m.
(2) Harborfest Music and Family Festival.	Racine, WI. All waters of Lake Michigan and Racine Harbor, near the Racine Launch Basin Entrance Light, within the arc of a circle with a 200-foot radius from the fireworks launch site located in position 42°43.722′ N, 087°46.673′ W.	Friday and Saturday of the third complete weekend of June; 9 p.m. to 11 p.m. each day.
(3) Spring Lake Heritage Festival Fireworks.	Spring Lake, MI. All waters of the Grand River within the arc of a circle with a 700-foot radius from a barge in center position 43°04.375′ N, 086°12.401′ W.	The third Saturday of June; 9 p.m. to 11 p.m.
(4) Elberta Solstice Festival	Elberta, MI. All waters of Betsie Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located in approximate center position 44°37.607′ N, 086°13.977′ W.	The last Saturday of June; 9 p.m. to 11 p.m.
(5) World War II Beach Invasion Re-enactment.	St. Joseph, MI. All waters of Lake Michigan in the vicinity of Tiscornia Park in St. Joseph, MI beginning at 42°06.918′ N, 086°29.421′ W; then west/northwest along the north breakwater to 42°06.980′ N, 086°29.682′ W; then northwest 100 yards to 42°07.018′ N, 086°29.728′ W; then northeast 2,243 yards to 42°07.831′ N, 086°28.721′ W; then southeast to the shoreline at 42°07.646′ N, 086°28.457′ W; then southwest along the shoreline to the point of origin.	The last Saturday of June; 8 a.m. to 2 p.m.
(6) Ephraim Fireworks	Ephraim, WI. All waters of Eagle Harbor and Lake Michigan within the arc of a circle with a 750-foot radius from the fireworks launch site located on a barge in position 45°09.304′ N, 087°10.844′ W.	The third Saturday of June; 9 p.m. to 11 p.m.
(7) Thunder on the Fox	Elgin, IL. All waters of the Fox River from the Kimball Street bridge, located at approximate position 42°02.499′ N, 088°17.367′ W, then 1250 yards north to a line crossing the river perpendicularly running through position 42°03.101′ N, 088°17.461′ W.	Friday, Saturday, and Sunday of the third weekend in June; 10 a.m. to 7 p.m. each day.
(8) Olde Ellison Bay Days Fireworks.	Ellison Bay, WI. All waters of Green Bay, in the vicinity of Ellison Bay Wisconsin, within the arc of a circle with a 400-foot radius from the fireworks launch site located on a barge in approximate center position 45°15.595′ N, 087°05.043′ W.	The fourth Saturday of June; 9 p.m. to 10 p.m.
(9) Sheboygan Harborfest Fireworks.	Sheboygan, WI. All waters of Lake Michigan and Sheboygan Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°44.914′ N, 087°41.897′ W.	June 15; 8:45 p.m. to 10:45 p.m.
	(e) July Safety Zones	
(1) Town of Porter Fireworks Display.	Porter IN. All waters of Lake Michigan within the arc of a circle with a 1000 foot radius from the fireworks launch site located in center position 41°39.927′ N, 087°03.933′ W.	The first Saturday of July; 8:45 p.m. to 9:30 p.m.
(2) City of Menasha 4th of July Fireworks.	Menasha, WI. All waters of Lake Winnebago and the Fox River within the arc of a circle with an 800-foot radius from the fireworks launch site located in center position 44°12.231′ N, 088°25.524′ W.	July 4; 9 p.m. to 10:30 p.m.
(3) Pentwater July Third Fireworks	Pentwater, MI. All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1,000-foot radius from the fireworks launch site located in position 43°46.942′ N, 086°26.625′ W.	July 3; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.
(4) Taste of Chicago Fireworks	Chicago, IL. All waters of Monroe Harbor and Lake Michigan bounded by a line drawn from 41°53.380′ N, 087°35.978′ W; then southeast to 41°53.247′ N, 087°35.434′ W; then south to 41°52.809′ N, 087°35.434′ W; then southwest to 41°52.453′ N, 087°36.611′ W; then north to 41°53.247′ N, 087°36.573′ W; then northeast returning to the point of origin.	July 3; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.
(5) St. Joseph Fourth of July Fireworks.	St. Joseph, MI. All waters of Lake Michigan and the St. Joseph River within the arc of a circle with a 1000-foot radius from the fireworks launch site in position 42°06.867′ N, 086° 29.463′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(6) US Bank Fireworks	Milwaukee, WI. All waters and adjacent shoreline of Milwaukee Harbor, in the vicinity of Veteran's park, within the arc of a circle with a 1,200-foot radius from the center of the fireworks launch site which is located on a barge in approximate position 43°02.362′ N, 087°53.485′ W.	July 3; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.
(7) Manistee Independence Day Fireworks.	Manistee, MI. All waters of Lake Michigan, in the vicinity of the First Street Beach, within the arc of a circle with a 1,000-foot radius from the fireworks launch site located in position 44°14.854′ N, 086°20.757′ W.	July 3; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.

TABLE 165.929—Continued

Event	Location [1]	Enforcement date and time [2]
(8) Frankfort Independence Day Fireworks.	Frankfort, MI. All waters of Lake Michigan and Frankfort Harbor, bounded by a line drawn from 44°38.100′ N, 086°14.826′ W; then south to 44°37.613′ N, 086°14.802′ W; then west to 44°37.613′ N, 086°15.263′ W; then north to 44°38.094′ N, 086°15.263′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(9) Freedom Festival Fireworks	Ludington, MI. All waters of Lake Michigan and Ludington Harbor within the arc of a circle with a 800-foot radius from the fireworks launch site located in position 43°57.171′ N, 086°27.718′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(10) White Lake Independence Day Fireworks.	Montague, MI. All waters of White Lake within the arc of a circle with an 800-foot radius from a center position at 43°24.621′ N, 086°21.463′ W.	July 4; 9:30 p.m. to 11:30 p.m. Rain date: July 5; 9:30 p.m. to 11:30 p.m.
(11) Muskegon Summer Celebration July Fourth Fireworks.	Muskegon, MI. All waters of Muskegon Lake, in the vicinity of Hartshorn Municipal Marina, within the arc of a circle with a 700-foot radius from a center position at 43°14.039′ N, 086°15.793′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(12) Grand Haven Jaycees Annual Fourth of July Fireworks.	Grand Haven, MI. All waters of the Grand River within the arc of a circle with a 800-foot radius from the fireworks launch site located on the west bank of the Grand River in position 43°3.908′ N, 086°14.240′ W.	July 4; 9 p.m. to 11:30 p.m. Rain date: July 5; 9 p.m. to 11:30 p.m.
(13) Celebration Freedom Fireworks.	Holland, MI. All waters of Lake Macatawa in the vicinity of Kollen Park within the arc of a circle with a 2000-foot radius of a center launch position at 42°47.440′ N, 086°07.621′ W.	The Saturday prior to July 4; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.
(14) Van Andel Fireworks Show	Holland, MI. All waters of Lake Michigan and the Holland Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in approximate position 42°46.3518′ N, 086°12.710′ W.	July 4; 9 p.m. to 11 p.m. Raindate: July 3; 9 p.m. to 11 p.m.
(15) Saugatuck Independence Day Fireworks.	Saugatuck, MI. All waters of Kalamazoo Lake within the arc of a circle with a 500-foot radius from the fireworks launch site in center position 42°39.074′ N, 086°12.285′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(16) South Haven Fourth of July Fireworks.	South Haven, MI. All waters of Lake Michigan and the Black River within the arc of a circle with a 1000-foot radius from the fireworks launch site located in center position 42°24.125′ N, 086°17.179′ W.	July 3; 9:30 p.m. to 11:30 p.m.
(17) Town of Dune Acres Independence Day Fireworks.	Dune Acres, IN. All Waters of Lake Michigan within the arc of a circle with a 700-foot radius from the fireworks launch site located in position 41°39.303′ N, 087°05.239′ W.	The first Saturday of July; 8:45 p.m. to 10:30 p.m.
(18) Gary Fourth of July Fireworks	Gary, IN. All waters of Lake Michigan, approximately 2.5 miles east of Gary Harbor, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°37.322′ N, 087°14.509′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(19) Joliet Independence Day Celebration Fireworks.	Joliet, IL. All waters of the Des Plains River, at mile 288, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 41°31.522′ N, 088°05.244′ W.	July 3; 9 p.m. to 11 p.m. Rain date: July 4; 9 p.m. to 11 p.m.
(20) Glencoe Fourth of July Celebration Fireworks.	Glencoe, IL. All waters of Lake Michigan in the vicinity of Lake Front Park, within the arc of a circle with a 500-foot radius from a barge in position 42°08.404′ N, 087°44.930′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(21) Lakeshore Country Club Independence Day Fireworks.	Glencoe, IL. All waters of Lake Michigan within the arc of a circle with a 600-foot radius from a center point fireworks launch site in approximate position 42°09.130′ N, 087°45.530′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(22) Shore Acres Country Club Independence Day Fireworks.	Lake Bluff, IL. All waters of Lake Michigan within the arc of a circle with a 600-foot radius from approximate position 42°17.847′ N, 087°49.837′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(23) Kenosha Independence Day Fireworks.	Kenosha, WI. All waters of Lake Michigan and Kenosha Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°35.283′ N, 087°48.450′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(24) Fourthfest of Greater Racine Fireworks.	Racine, WI. All waters of Racine Harbor and Lake Michigan within the arc of a circle with a 900-foot radius from a center point position at 42°44.259′ N, 087°46.635′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(25) Sheboygan Fourth of July Celebration Fireworks.	Sheboygan, WI. All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°44.917′ N, 087°41.850′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(26) Manitowoc Independence Day Fireworks.	Manitowoc, WI. All waters of Lake Michigan and Manitowoc Harbor, in the vicinity of south breakwater, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°05.395′ N, 087°38.751′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(27) Sturgeon Bay Independence Day Fireworks.	Sturgeon Bay, WI. All waters of Sturgeon Bay, in the vicinity of Sunset Park, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 44°50.617′ N, 087°23.300′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(28) Fish Creek Independence	Fish Creek, WI. All waters of Green Bay, in the vicinity of Fish Creek Harbor, within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in position 45°07.867′ N, 087°14.617′ W.	The first Saturday after July 4; 9 p.m. to 11 p.m. Rain date: The first Sunday after July 4; 9 p.m. to 11 p.m.

TABLE 165.929—Continued

Event	Location [1]	Enforcement date and time [2]
(29) Fire over the Fox Fireworks	Green Bay, WI. All waters of the Fox River including the mouth of the East River from the railroad bridge in approximate position 44°31.467′ N, 088°00.633′ W then southwest to the US 141 bridge in approximate position 44°31.102′ N, 088°00.963′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(30) Celebrate Americafest Ski Show.	Green Bay, WI. All waters of the Fox River, including the mouth of the East River from the West Walnut Street Bridge in approximate position 44°30.912′ N, 088°01.100′ W, then northeast to an imaginary line running perpendicularly across the river through coordinate 44°31.337′ N, 088°00.640′ W.	July 4 from 2:30 p.m. to 4:30 p.m. Rain date: July 5; 2:30 p.m. to 4:30 p.m.
(31) Marinette Fourth of July Celebration Fireworks.	Marinette, WI. All waters of the Menominee River, in the vicinity of Stephenson Island, within the arc of a circle with a 900 foot radius from the fireworks launch site in center position 45°6.232′ N, 087°37.757′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(32) Evanston Fourth of July Fireworks.	Evanston, IL. All waters of Lake Michigan, in the vicinity of Centennial Park Beach, within the arc of a circle with a 500-foot radius from the fireworks launch site located in position 42°02.933′ N, 087°40.350′ W.	July 4; 9 p.m. to 11 p.m. Rain date: July 5; 9 p.m. to 11 p.m.
(33) Gary Air and Water Show	Gary, IN. All waters of Lake Michigan bounded by a line drawn from 41°37.250′ N, 087°16.763′ W; then east to 41°37.440′ N, 087°13.822′ W; then north to 41°38.017′ N, 087°13.877′ W; then southwest to 41°37.805′ N, 087°16.767′ W; then south returning to the point of origin.	July 10 thru 14; 8:30 a.m. to 5 p.m.
(34) Annual Trout Festival Fireworks.	Kewaunee, WI. All waters of Kewaunee Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°27.493′ N, 087°29.750′ W.	Friday of the second complete weekend of July; 9 p.m. to 11 p.m.
(35) Michigan City Summerfest Fireworks.	Michigan City, IN. All waters of Michigan City Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°43.700′ N, 086°54.617′ W.	Sunday of the second complete weekend of July; 8:30 p.m. to 10:30 p.m.
(36) Port Washington Fish Day Fireworks.	Port Washington, WI. All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23.117′ N, 087°51.900′ W.	The third Saturday of July; 9 p.m. to 11 p.m.
(37) Bay View Lions Club South Shore Frolics Fireworks.	Milwaukee, WI. All waters of Lake Michigan and Milwaukee Harbor, in the vicinity of South Shore Yacht Club, within the arc of a circle with a 900-foot radius from the fireworks launch site in position 42°59.658′ N, 087°52.808′ W.	Friday, Saturday, and Sunday of the second or third weekend of July; 9 p.m. to 11 p.m. each day.
(38) Venetian Festival Fireworks	St. Joseph, MI. All waters of Lake Michigan and the St. Joseph River, near the east end of the south pier, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°06.800′ N, 086°29.250′ W.	Saturday of the third complete weekend of July; 9 p.m. to 11 p.m.
(39) Joliet Waterway Daze Fireworks.	Joliet, IL. All waters of the Des Plaines River, at mile 287.5, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°31.250′ N, 088°05.283′ W.	Friday and Saturday of the third complete weekend of July; 9 p.m. to 11 p.m. each day.
(40) EAA Airventure	Oshkosh, WI. All waters of Lake Winnebago in the vicinity of Willow Harbor within an area bounded by a line connecting the following coordinates: beginning at 43°56.822′ N, 088°29.904′ W, then north approximately 5100 feet to 43°57.653′ N, 088°29.9048′ W, then east approximately 2300 feet to 43°57.653′ N, 088° 29.374′ W; then south to shore at 43°56.933′ N, 088°29.374′ W; then southwest along the shoreline to 43°56.822′ N, 088°29.564′ W; then west returning to the point of origin.	The last complete week of July, beginning Monday and ending Sunday; 8 a.m. to 8 p.m. each day.
(41) Saugatuck Venetian Night Fireworks.	Saugatuck, MI. All waters of Kalamazoo Lake within the arc of a circle with a 500-foot radius from the fireworks launch site located on a barge in position 42°39.073′ N, 086°12.285′ W.	The last Saturday of July; 9 p.m. to 11 p.m.
(42) Roma Lodge Italian Festival Fireworks.	Racine, WI. All waters of Lake Michigan and Racine Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°44.067′ N, 087°46.333′ W.	Friday and Saturday of the last complete weekend of July; 9 p.m. to 11 p.m.
(43) Chicago Venetian Night Fireworks.	Chicago, IL. All waters of Monroe Harbor and all waters of Lake Michigan bounded by a line drawn from 41°53.050′ N, 087°36.600′ W; then east to 41°53.050′ N, 087°36.350′ W; then south to 41°52.450′ N, 087°36.350′ W; then west to 41°52.450′ N, 087°36.617′ W; then north returning to the point of origin.	Saturday of the last weekend of July; 9 p.m. to 11 p.m.
(44) New Buffalo Business Association Fireworks.	New Buffalo, MI. All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 800-foot radius from the fireworks launch site located in position 41°48.153′ N, 086°44.823′ W.	July 3rd or July 5th; 9:30 p.m. to 11:15 p.m.

TABLE 165.929—Continued

Event	Location [1]	Enforcement date and time [2]
(45) Start of the Chicago to Mackinac Race.	Chicago, IL. All waters of Lake Michigan in the vicinity of the Navy Pier at Chicago IL, within a rectangle that is approximately 1500 by 900 yards. The rectangle is bounded by the coordinates beginning at 41°53.252′ N, 087°35.430′ W; then south to 41°52.812′ N, 087°35.430′ W; then east to 41°52.817′ N, 087°34.433′ W; then north to 41°53.250′ N, 087°34.433′ W; then west, back to point of origin.	July 12; 2 p.m. to 4:30 p.m. and July 13; 9 a.m. to 3 p.m.
(46) Fireworks at Pier Wisconsin	Milwaukee, WI. All waters of Milwaukee Harbor, including Lakeshore Inlet and the marina at Pier Wisconsin, within the arc of a circle with a 300-foot radius from the fireworks launch site on Pier Wisconsin located in approximate position 43°02.178′ N, 087°53.625′ W.	Dates and times will be issued by Notice of Enforcement and Broadcast Notice to Mariners.
(47) Gills Rock Fireworks	Gills Rock, WI. All waters of Green Bay near Gills Rock WI within a 1000-foot radius of the launch vessel in approximate position at 45°17.470′ N, 087°01.728′ W.	July 4; 8:30 p.m. to 10:30 p.m.
(48) City of Menominee 4th of July Celebration Fireworks.	Menominee, MI. All Waters of Green Bay, in the vicinity of Menominee Marina, within the arc of a circle with a 900-foot radius from a center position at 45°06.417′ N, 087° 36.024′ W.	July 4; 9 p.m. to 11 p.m.
(49) Miesfeld's Lakeshore Weekend Fireworks.	Sheboygan, WI. All waters of Lake Michigan and Sheboygan Harbor within an 800-foot radius from the fireworks launch site located at the south pier in approximate position 43°44.917′ N, 087°41.967′ W.	July 26; 9 p.m. to 10 p.m.
(50) Marinette Logging and Heritage Festival Fireworks.	Marinette, WI. All waters of the Menominee River, in the vicinity of Stephenson Island, within the arc of a circle with a 900-foot radius from the fireworks launch site in position 45°06.232′ N, 087°37.757′ W.	July 13; 9 p.m. to 11 p.m.
(51) Summer in the City Water Ski Show.	Green Bay, WI. All waters of the Fox River in Green Bay, WI from the Main Street Bridge in position 44°31.089′ N, 088°00.904′ W then southwest to the Walnut Street Bridge in position 44°30.900′ N, 088°01.091′ W.	Each Wednesday of July through August; 6 p.m. to 6:30 p.m. and 7 p.m. to 7:30 p.m.
(52) Holiday Celebration Fireworks	Kewaunee, WI. All waters of Kewaunee Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 44°27.481′ N, 087°29.735′ W.	July 4; 8:30 p.m. to 10:30 p.m. Rain date: July 5; 8:30 p.m. to 10:30 p.m.
(53) Independence Day Fireworks ..	Wilmette, IL. All waters of Lake Michigan and the North Shore Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located at approximate center position 42°04.674′ N, 087°40.856′ W.	July 3; 8:30 p.m. to 10:15 p.m.
(f) August Safety Zones		
(1) Michigan Super Boat Grand Prix	Michigan City, IN. All waters of Lake Michigan bounded by a rectangle drawn from 41°43.655′ N, 086°54.550′ W; then northeast to 41°44.808′ N, 086°51.293′ W, then northwest to 41°45.195′ N, 086°51.757′ W; then southwest to 41°44.063′ N, 086°54.873′ W; then southeast returning to the point of origin.	The first Sunday of August; 9 a.m. to 4 p.m. Rain date: The first Saturday of August; 9 a.m. to 4 p.m.
(2) Milwaukee Air and Water Show	Milwaukee, WI. All waters and adjacent shoreline of Lake Michigan in the vicinity of McKinley Park located within an area that is approximately 4800 by 1250 yards. The area will be bounded by the points beginning at 43°02.450′ N, 087°52.850′ W; then southeast to 43°02.230′ N, 087°52.061′ W; then northeast to 43°04.543′ N, 087°50.801′ W; then northwest to 43°04.757′ N, 087°51.512′ W; then southwest returning to the point of origin.	July 31 thru August 4; 8:30 a.m. to 5 p.m.
(3) Port Washington Maritime Heritage Festival Fireworks.	Port Washington, WI. All waters of Port Washington Harbor and Lake Michigan, in the vicinity of the WE Energies coal dock, within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°23.117′ N, 087°51.900′ W.	Saturday of the last complete weekend of July or the second weekend of August; 9 p.m. to 11 p.m.
(4) Grand Haven Coast Guard Festival Fireworks.	Grand Haven, MI. All waters of the Grand River within the arc of a circle with a 600-foot radius from the fireworks launch site located on the west bank of the Grand River in position 43°03.907′ N, 086°14.247′ W.	First weekend of August; 9 p.m. to 11 p.m.
(5) Sturgeon Bay Yacht Club Evening on the Bay Fireworks.	Sturgeon Bay, WI. All waters of Sturgeon Bay within the arc of a circle with a 280-foot radius from the fireworks launch site located on a barge in approximate position 44°49.310′ N, 087°21.370′ W.	The first Saturday of August; 8 p.m. to 10 p.m.
(6) Hammond Marina Venetian Night Fireworks.	Hammond, IN. All waters of Hammond Marina and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 41°41.883′ N, 087°30.717′ W.	The first Saturday of August; 9 p.m. to 11 p.m.
(7) North Point Marina Venetian Festival Fireworks.	Winthrop Harbor, IL. All waters of Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 42°28.917′ N, 087°47.933′ W.	The second Saturday of August; 9 p.m. to 11 p.m.

TABLE 165.929—Continued

Event	Location [1]	Enforcement date and time [2]
(8) Waterfront Festival Fireworks	Menominee, MI. All Waters of Green Bay, in the vicinity of Menominee Marina, within the arc of a circle with a 1000-foot radius from a center position at 45°06.447′ N, 087°35.991′ W.	August 3; 9 p.m. to 11 p.m.
(9) Ottawa Riverfest Fireworks	Ottawa, IL. All waters of the Illinois River, at mile 239.7, within the arc of a circle with a 300-foot radius from the fireworks launch site located in position 41°20.483′ N, 088°51.333′ W.	The first Sunday of August; 9 p.m. to 11 p.m.
(10) Chicago Air and Water Show ..	Chicago, IL. All waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55.900′ N at the shoreline, then east to 41°55.900′ N, 087°37.200′ W, then southeast to 41°54.000′ N, 087°36.000′ W, then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore.	August 14 thru 18; 8:30 a.m. to 5 p.m.
(11) Pentwater Homecoming Fireworks.	Pentwater, MI. All waters of Lake Michigan and the Pentwater Channel within the arc of a circle with a 1000-foot radius from the fireworks launch site located in position 43°46.942′ N, 086°26.633′ W.	Saturday following the second Thursday of August; 9 p.m. to 11 p.m.
(12) Chicago Match Cup Race	Chicago, IL. All waters of Chicago Harbor in the vicinity of Navy Pier and the Chicago Harbor break wall bounded by coordinates beginning at 41°53.617′ N, 087°35.433′ W; then south to 41°53.400′ N, 087°35.433′ W; then west to 41°53.400′ N, 087°35.917′ W; then north to 41°53.617′ N, 087°35.917′ W; then back to point of origin.	August 6 thru 11; 8 a.m. to 8 p.m.
(13) New Buffalo Ship and Shore Fireworks.	New Buffalo, MI. All waters of Lake Michigan and New Buffalo Harbor within the arc of a circle with a 800-foot radius from the fireworks launch site located in position 41°48.150′ N, 086°44.817′ W.	August 10; 9:30 p.m. to 11:15 p.m.
(14) Sister Bay Marinafest Ski Show.	Sister Bay, WI. All waters of Sister Bay within an 800-foot radius of position 45° 11.585′ N, 087°07.392′ W.	August 31; 1 p.m. to 3:15 p.m.
(15) Sister Bay Marinafest Fireworks.	Sister Bay, WI. All waters of Sister Bay within an 800-foot radius of the launch vessel in approximate position 45°11.585′ N, 087°07.392′ W.	August 31; 8:15 p.m. to 10 p.m.
(16) Vessel Launch at Marinette Marine.	Marinette, WI. All waters of the Menominee River in the vicinity of Marinette Marine Corporation, from the Bridge Street Bridge located in position 45°06.188′ N, 087°37.583′ W, then approximately .95 NM south east to a line crossing the river perpendicularly passing through positions 45°05.881′ N, 087°36.281′ W and 45°05.725′ N, 087°36.385′ W.	This zone will be enforced when a vessel is launched by issue of Notice of Enforcement and Marine Broadcast.
(17) Fireworks Display	Winnetka, IL. All waters of Lake Michigan within the arc of a circle with a 900-foot radius from a center point barge located in approximate position 42°06.402′ N, 087°43.115′ W.	Third Saturday of August; 9:15 p.m. to 10:30 p.m.
(18) Algoma Shanty Days Fireworks.	Algoma, WI. All waters of Lake Michigan and Algoma Harbor within the arc of a circle with a 1000-foot radius from the fireworks launch site located in a center position of 44°36.400′ N, 087°25.900′ W.	Sunday of the second complete weekend of August; 9 p.m. to 11 p.m.
(g) September Safety Zones		
(1) ISAF Nations Cup Grand Final Fireworks Display.	Sheboygan, WI. All waters of Lake Michigan and Sheboygan Harbor, in the vicinity of the south pier in Sheboygan Wisconsin, within a 500 foot radius from the fireworks launch site located on land in position 43°44.917′ N, 087°41.850′ W.	September 13; 7:45 p.m. to 8:45 p.m.
(h) November Safety Zones		
(1) Downtown Milwaukee Fireworks	Milwaukee, WI. All waters of the Milwaukee River in the vicinity of the State Street Bridge within the arc of a circle with a 300-foot radius from a center point fireworks launch site in approximate position 43°02.559′ N, 087°54.749′ W.	The third Thursday of November; 6 p.m. to 8 p.m.
(2) Magnificent Mile Fireworks Display.	Chicago, IL. All waters and adjacent shoreline of the Chicago River bounded by the arc of the circle with a 210-foot radius from the fireworks launch site with its center in approximate position of 41°53.350′ N, 087°37.400′ W.	The third weekend in November; sunset to termination of display.
(i) December Safety Zones		
(1) New Years Eve Fireworks	Chicago, IL. All waters of Monroe Harbor and Lake Michigan within the arc of a circle with a 1000-foot radius from the fireworks launch site located on a barge in approximate position 41°52.683′ N, 087°36.617′ W.	December 31; 11 p.m. to January 1 at 1 a.m.

[1] All coordinates listed in Table 165.929 reference Datum NAD 1983.
[2] As noted in paragraph (a)(3) of this section, the enforcement dates and times for each of the listed safety zones are subject to change.

Dated: December 3, 2014.

A.B. Cocanour,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2014–30104 Filed 12–23–14; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket Nos. RM2015–7; Order No. 2294]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the initiation of an informal rulemaking proceeding to consider a proposed change to analytical principles relating to periodic reports (Proposal Thirteen). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 11, 2015. *Reply Comments are due:* April 8, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On December 11, 2014, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting the Commission's initiation of an informal rulemaking proceeding to consider a proposed change to analytical principles relating to periodic reports.[1] The subject of the Petition is Proposal Thirteen, Updating the City Carrier Street Time Model.

The Petition includes two attachments. One is a summary of Proposal Thirteen (Summary); the other is a Report on City Carrier Street Time Study (Report). *Id.* at 1. The Postal Service characterizes the Report as a more comprehensive discussion of the Proposal. Petition at 1. The Postal Service concurrently filed two library references, along with an application for non-public treatment for one.[2]

The Postal Service notes that Proposal Thirteen encompasses a subject which has been extensively discussed as part of the strategic rulemaking in Docket No. RM2011–3, Priorities for Future Data Collection and Analytical Work Relating to Periodic Reporting. It therefore states that it would simultaneously file a notice in that docket informing participants that it has presented Proposal Thirteen in this case.[3] Petition at 1.

II. Summary

City carrier street time costs. The city carrier network is the largest part of the Postal Service's delivery network, incurring a total direct labor cost in Fiscal Year (FY) 2013 of almost $16 billion, of which over $12 billion were in street time costs. *Id.* Summary at 1. These city carrier street time costs represented 16.7 percent of total Postal Service FY 2013 costs. *Id.*

Scope of proposal. Proposal Thirteen concerns changes to the city carrier street time model, which is used to determine the attributable street time costs in cost segment 7, City Carriers—Street Activities. *Id.* The Postal Service characterizes the changes as an update and improvement to the city carrier street time model. *Id.* at 2. It proposes accomplishing this by updating and refining the three main components of the model: construction of the cost pools, estimation of regular delivery variabilities, and estimation of package and accountable delivery variabilities. *Id.* In addition, the Postal Service asserts that improvements in the city carrier operational data systems have made it possible to use these systems to produce data needed for the update. *Id.* It states that this improvement allows all three parts of the model to be based upon larger, more stable, data sets and improved the statistical foundation for calculating attributable street time costs. *Id.*

Anticipated implementation date. The Postal Service anticipates implementing this methodology change as the basis for FY 2015 reporting of city carrier street time costs. Petition at 2.

III. Initial Commission Action

The Commission establishes Docket No. RM2015–7 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.*

A technical conference will be held on January 14, 2015, at 10:00 a.m. Eastern Standard Time in the Commission's hearing room.[4] The technical conference will be audiocast. The Postal Service is to ensure that persons familiar with Proposal Thirteen and the supporting data and information that have been filed in this docket attend and, to the extent required, participate in the technical conference.

Interested persons may submit comments on the Petition and Proposal Thirteen no later than March 11, 2015. Reply comments are due no later than April 8, 2015.

Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

Any additional documents the Commission issues in this docket will be posted on the Commission's Web site (*http://www.prc.gov.),* with redaction of protected material if warranted.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2015–7 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Change in Analytical Principles (Proposal Thirteen), filed December 11, 2014.

2. A technical conference will be held on January 14, 2015, at 10:00 a.m. in the Commission's hearing room at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

3. The Postal Service is to ensure that persons familiar with Proposal Thirteen, including supporting data and information that have been filed in this docket, attend and, to the extent required, participate in the technical conference.

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Change in Analytical Principles (Proposal Thirteen), December 11, 2014 (Petition).

[2] Notice of Filing of USPS–RM2015–7/1, USPS–RM2015–7/NP1, and Application for Nonpublic Treatment, December 11, 2014 (Notice). Library Reference USPS–RM2015–7/1 includes the Report the Postal Service filed along with the Petition. Library Reference USPS–RM2015–7/NP1 contains supporting non-public material. The Notice incorporates by reference the Application for Non-Public Treatment of Materials contained in Attachment Two to the December 27, 2013 United States Postal Service Fiscal Year 2013 Annual Compliance Report. Notice at 1. See 39 CFR part 3007 for information on access to non-public material.

[3] See Docket No. RM2011–3, Notice of the United States Postal Service of Filing Proposal to Update City Carrier Costing, December 11, 2014.

[4] Attendees are advised to allow sufficient time for security procedures.

4. Comments are due no later than March 11, 2015. Reply comments are due no later than April 8, 2015.

5. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–30111 Filed 12–23–14; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–BE46

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Amendment 16

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Gulf of Mexico (Gulf) Fishery Management Council (Council) has submitted Amendment 16 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) for review, approval, and implementation by NMFS. Amendment 16 includes actions to revise the annual catch limit (ACL) for royal red shrimp, remove the royal red shrimp quota, and revise the accountability measures (AM) for royal red shrimp to remove an inconsistency in the regulations.

DATES: Written comments must be received on or before February 23, 2015.

ADDRESSES: You may submit comments on Amendment 16, identified by ''NOAA–NMFS–2014–0030'' by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0030,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Susan Gerhart, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 16, which includes an environmental impact statement, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/shrimp/2014/am16/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any FMP or amendment to NMFS for review and approval, partial approval, or disapproval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish an announcement in the **Federal Register** notifying the public that the plan or amendment is available for review and comment.

The FMP being revised by Amendment 16 was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

Background

The FMP was established in 1981, and the maximum sustainable yield for royal red shrimp was estimated at 392,000 lb (177.9 mt), tail weight, annually and specified as a fixed annual quota (46 FR 27489, May 20, 1981). This quota has remained in effect since that time. On January 30, 2012, NMFS implemented regulations developed through the Generic ACL Amendment to multiple fishery management plans, including the Shrimp FMP (December 29, 2011, 76 FR 82044). That amendment included actions to establish the commercial ACL and AM for royal red shrimp. However, the ''no action'' alternatives and discussions in the Generic ACL Amendment incorrectly stated that there were currently no catch limits or AMs for royal red shrimp, even though a quota and in-season quota closure were in the regulations. As a consequence, through the Generic ACL Amendment, both a royal red shrimp ACL and AM were added to the regulations, but the existing quota and in-season quota closure provision were not removed. On March 11, 2014, NMFS published a notice of intent to prepare a supplemental environmental impact statement for Amendment 16 and requested public comment (79 FR 13623).

Federal regulations currently include a royal red shrimp ACL of 334,000 lb (151,000 kg), tail weight and a quota of 392,000 lb (177.8 mt), tail weight. Amendment 16 would remove the royal red shrimp quota and update the ACL to 337,000 lb (152,861 kg), tail weight, which is equal to the acceptable biological catch as recommended by the Council's Scientific and Statistical Committee at its March 2014 meeting.

Federal regulations currently include a royal red shrimp in-season closure if the quota is met or projected to be met, based on in-season monitoring (which functions as an AM), and include an AM that implements in-season monitoring and an ACL closure in the year following any ACL overage. The presence of two AMs in the regulations presents an inconsistency in the management of royal red shrimp. Amendment 16 would remove the in-season quota closure associated with the royal red shrimp quota and retain the AM associated with the ACL.

A proposed rule that would implement measures outlined in Amendment 16 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Council submitted Amendment 16 for Secretarial review, approval, and implementation on November 19, 2014. Comments received by February 23, 2015, whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: December 19, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–30160 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–XD339

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 14 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 14 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for review by the Secretary of Commerce. The purpose of Amendment 14 is to specify an estimate of maximum sustainable yield (MSY) for the northern subpopulation of northern anchovy in the CPS FMP.

DATES: Comments on Amendment 14 must be received by February 23, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2014–0156, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0156,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Joshua Lindsay.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft CPS FMP as Amended through Amendment 14, with notations showing how Amendment 14 would change the FMP, if approved, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384 or the NMFS West Coast Region (William W. Stelle, Jr. or Joshua Lindsay).

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034; or Kerry Griffin, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the MSA, 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

The MSA requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 14.

At the November 2013 Council meeting, the Council adopted an F_{MSY} of 0.3 as the best estimate of MSY for the northern subpopulation of northern anchovy and agreed to amend the CPS FMP accordingly to include this reference point. This action was based on data compiled by the CPS Management Team and a recommendation by the Council's Science and Statistical Committee (SSC). An F_{MSY} equal to 0.3, the default exploitation rate for Pacific mackerel, a stock for which more information is known regarding stock variability and productivity, was deemed an appropriate specification of MSY by the SSC. Based on available information regarding northern anchovy, they are likely to be at least as productive as Pacific mackerel, and likely have higher natural mortality, which would typically be associated with a higher F_{MSY}. Speaking further to their recommendation of the F_{MSY}, the SSC stated that due to both high uncertainty in the available biomass estimates and large fluctuations in stock biomass that are known to occur in species such as anchovy, a fixed biomass-based approach to specifying MSY would likely not be appropriate. Additionally, because the northern subpopulation of northern anchovy is lightly fished, with inconsistent effort over time, the existing time series of catch was likely an unreliable indicator of stock status and therefore determining a catch-based MSY would not be meaningful.

Public comments on Amendment 14 must be received by February 23, 2015 to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 14. All comments received during the comment period for the amendment will be considered in the approval/disapproval decision.

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

Dated: December 19, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2014–30268 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 101214615–4999–01]

RIN 0648–BA61

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 31 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). The proposed rule would make several changes to regulations governing the acquisition, use, and retention of quota share established for captains and crew, known as crew quota share or C shares, under the Crab Rationalization Program (CR Program). To implement Amendment 31, the proposed rule would: Temporarily expand the eligibility requirements for individuals wishing to acquire C share Quota Share (QS) by transfer; establish minimum participation requirements for C share QS holders to be eligible to receive an annual allocation of Individual Fishing Quota (IFQ); establish minimum participation requirements for C share QS holders to be eligible to retain their C share QS and establish an administrative process for revocation of an individual's C share QS, if he or she fails to satisfy the minimum participation requirements; establish a regulatory mechanism to ensure that three percent of the total allowable catch (TAC) for each CR Program crab fishery is allocated as IFQ to holders of C share QS; and remove the prohibition on leasing C share IFQ. In addition, the proposed rule would implement a regulatory amendment to the CR Program that adjusts certain CR Program application deadlines. Specifically, the proposed rule would: Establish an earlier deadline for filing annual IFQ, individual processing quota (IPQ), and crab harvesting cooperative IFQ applications, which would increase the amount of time during which NMFS would suspend the processing of IFQ and IPQ transfer applications; shorten the amount of time in which to appeal an initial administrative determination to withhold issuance of IFQ or IPQ; and provide in the regulations that an applicant's proof of timely filing for IFQ, IPQ, or cooperative IFQ would create a presumption of timely filing. Finally, the proposed rule would revise the reporting period and due date for CR Program registered crab receiver (RCR) Ex-vessel Volume and Value Reports. This action is necessary to ensure that individuals who hold C shares are active in the CR Program fisheries and to ensure that application deadlines provide adequate time to resolve disputes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments must be received no later than January 23, 2015.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2010–0265, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2010-0265,* 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.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285. Electronic copies of Amendment 31, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the categorical exclusion prepared for this action—as well as the Environmental Impact Statement prepared for the CR Program—may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* NMFS determined that this proposed action was categorically excluded from the need to prepare an environmental assessment under the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Karen Palmigiano, 907–586–7228.

SUPPLEMENTARY INFORMATION: The king and Tanner crab fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs FMP (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as amended by the Consolidated Appropriations Act of 2004 (Public Law 108–199, section 801). Regulations implementing the FMP, including the CR Program, are primarily located at 50 CFR part 680.

Background

Overview of CR Program and C Shares

The CR Program is a limited access privilege program that allocates the harvest of certain crab fisheries managed under the FMP among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued four types of quota share (QS) to persons based on their qualifying harvest histories in certain BSAI crab fisheries during a specific period of time defined under the CR Program. The four types of QS are catcher vessel owner (CVO), catcher processor owner (CPO), catcher vessel crew (CVC), and catcher processor crew (CPC). CVC and CPC QS are also known as ''crew shares'' or ''C shares.'' At the beginning of the CR Program, NMFS issued 97 percent of the QS as owner QS, either CVO or CPO, and issued the remaining three percent as C shares, either CVC or CPC.

NMFS issued C shares to individuals holding State of Alaska Commercial Fisheries Entry Commission (CFEC) Interim Use Permits, generally vessel captains, who met specific historic and recent participation requirements in CR Program fisheries. NMFS did not issue C shares to individuals who did not meet both the historic and recent participation criteria. After the initial issuance of C shares, individuals may only acquire C shares through transfer.

Each year, a QS holder submits a timely and complete ''Application for Annual Crab Individual Fishing Quota (IFQ) Permit'' in order to receive an exclusive harvest privilege for a portion of the total allowable catch (TAC) for each CR Program fishery in which the person holds QS. This harvest privilege is conferred as IFQ, and provides the QS holder with an annual allocation of pounds of crab for harvest in a specific CR Program crab fishery during the year in which it was allocated. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS pool in a crab fishery. For example, an individual holding C share QS equaling one percent of the C share QS pool in a crab fishery would receive IFQ to harvest one percent of the annual TAC allocated to C share QS in that crab fishery. NMFS issues holders of CVO QS two types of IFQ: Class A IFQ, which must be delivered to a processor holding a matching amount of IPQ, and Class B IFQ, which may be delivered to any registered crab receiver. Current regulations do not require C share IFQ to be matched with IPQ, and C share IFQ may be delivered to any registered crab receiver, similar to Class B CVO IFQ (see § 680.40(2)(b)(iii)).

When initially establishing C shares, the Council intended that individuals holding C shares be active in CR Program fisheries. To ensure active participation by crew, the CR Program requires the holder of C shares to be onboard the vessel when their C share IFQ is harvested (the ''holder on-board'' requirement) and prohibits holders of C shares from leasing their C share IFQ except in the case of a hardship. However, the CR Program exempts a holders of C shares from these two requirements if the holder of C shares has joined a crab harvesting cooperative and the holder's C share IFQ is converted to cooperative IFQ. The CR Program also includes participation criteria that must be satisfied for an individual to be eligible to receive C share QS by transfer. To receive C share QS by transfer, current regulations require an applicant to meet eligibility requirements at the time of transfer. To meet these eligibility requirements, an individual may submit an Application for BSAI Crab Eligibility to Receive QS/PQS by Transfer in advance of, or concurrently with, their Application for Transfer of Crab QS or PQS. The regulations require that an individual must be a U.S. citizen with (1) at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery; and (2) participation as crew in one of the CR Program fisheries in the 365 days prior to the date the transfer application is submitted to NMFS. If NMFS determines that an individual is eligible to receive C share QS by transfer, that individual would be required to submit proof of participation as crew in one of the CR Program fisheries in the 365 days prior to the date of their application to transfer QS if more than 365 days has elapsed between NMFS' determination of eligibility and the submission of the transfer application. (See regulations at § 680.41 (c)(2)(ii)(C).)

Annually, C share IFQ is assigned based on the individual's underlying QS. In a CR Program fishery, the annual allocation of IFQ assigned to any person (p) is based on the TAC for that crab QS fishery (f) less the allocation to the Western Alaska Community Development Quota (CDQ) Program and the Western Aleutian Islands golden king crab fishery. As expressed in regulations at § 680.40(h), the annual IFQ allocation calculation is as follows:

- IFQ $TAC_f = TAC_f -$ (Western Alaska CDQ Program + Western Aleutian Islands golden king crab fishery)
- $IFQ_{pf} =$ IFQ $TAC_f * (QS_{pf}/QS_f)$

Based on these calculations, a person holding one percent of the QS in a CR Program fishery (QS_{pf}) would receive IFQ to harvest one percent of the annual TAC in that CR Program fishery.

Crab Cooperative, IFQ, and IPQ Application Deadlines

Under current regulations, the crab fishing year begins on July 1 and ends on June 30. Annually, QS and PQS holders must apply for allocations of IFQ and IPQ, respectively, for the upcoming crab fishing year. QS holders apply for annual IFQ through an individual application. They must indicate on this application whether or not they are joining a cooperative. If they are joining a cooperative that year, the cooperative's annual IFQ application must include the QS holder's annual IFQ application (or a copy of that application). Because IPQ is not subject to cooperative management, a PQS holder applies for IPQ directly to NMFS, and NMFS issues IPQ directly to the PQS holder. Under the current regulations, all applications for IFQ, IPQ, and cooperative IFQ must be filed with the NMFS Restricted Access Management Program (RAM) by August 1. Although the crab fishing year begins on July 1, the individual crab fisheries open at different times later in the crab fishing year. Until recently, the first crab fishery to open, the Aleutian Islands golden king crab fishery, opened on August 15; the remaining crab fisheries open on October 15 or later in the crab fishing year. In March 2014, the State of Alaska changed the opening date for the Aleutian Islands golden king crab fishery to August 1 to allow for fishing to occur slightly earlier in the summer months when it is safer for the fishers. To aid QS and PQS holders in meeting the application deadline, NMFS provides application forms on its Web site (see **ADDRESSES**), highlights the application deadline on the site, and sends notices to QS and PQS holders near the end of the crab fishing year reminding them to apply for IFQ or IPQ for the next crab fishing year.

Generally, 30 to 40 QS and PQS holders fail to file their applications for IFQ or IPQ by the August 1 deadline each year. When this occurs, RAM sends an Initial Administrative Determination (IAD) to the QS or PQS holder. The IAD notifies the QS or PQS holder of the holder's failure to file in a timely manner and states that the holder will not receive an annual allocation of IFQ or IPQ. The IAD also states that the QS or PSQ holder has the right to appeal the IAD by submitting an appeal to NMFS within 60 days of the date of the IAD. RAM typically issues IADs for failure to timely file an application for IFQ or IPQ before the middle of August. Alaska Department of Fish and Game (ADF&G) typically announces TAC information for a majority of the CR Program fisheries around September 30, and RAM issues most IFQ and IPQ permits early in October, in order to allow share matching to occur prior to the October 15 start date for most of the CR Program crab fisheries.

To ensure that access to an annual allocation is not lost should a QS or PQS holder prevail on appeal of the IAD, RAM holds in reserve the amount of IFQ or IPQ in dispute until final agency action on the IAD is reached. In some instances, final agency action is reached before RAM issues IFQ and IPQ for the upcoming crab fishing year, allowing RAM to either issue the IFQ or IPQ to the successful appellant or return the IFQ or IPQ to the general pool for distribution if the IAD was not appealed or the appellant was unsuccessful in the appeal. However, in instances where a final agency action is not reached before RAM issues IFQ and IPQ for the upcoming crab fishing year, NMFS must continue to hold the disputed IFQ or IPQ in reserve.

The need for NMFS to hold disputed IFQ or IPQ in reserve could lead to unintended repercussions for the other QS and PQS holders who are not involved in the dispute. As mentioned previously, NMFS issues CVO QS as either Class A IFQ, which must be delivered to a Registered Crab Receiver (RCR) with a matching amount of unused IPQ, or Class B IFQ, which may be delivered to any RCR and does not require a matching amount of IPQ. Regulations require that Class A IFQ be matched with IPQ within five days after RAM issues the annual IFQ and IPQ for a crab fishery. Class A IFQ and IPQ are issued by fishery in equal amounts to facilitate this share matching requirement. Therefore, any Class A IFQ or any IPQ that is held in reserve pending appeal can result in unusable IFQ and/or IPQ, which equals unharvested pounds of crab. For example, if 100 pounds of Class A IFQ is held in reserve pending appeal, NMFS will still issue 100 pounds of IPQ to match the amount of reserved Class A IFQ. This is necessary in order to ensure that should the IFQ held in reserve be issued, the IFQ holder can match that IFQ with IPQ as required by regulation. If the IFQ subject to appeal is never issued (because the applicant fails to appeal or the appeal is denied), then the processor holding the matching IPQ cannot use that IPQ. The reverse is also true; if 100 pounds of IPQ is held in reserve pending appeal and then never issued, the 100 pounds of matching Class A IFQ cannot be used by the harvesting sector.

Need for Action

At its June 2007 meeting, the Council received public testimony and recommendations from its Advisory Panel advocating for modifications to the participation requirements for acquisition and use of C shares. Participants in the CR Program fisheries raised the following issues:

- At least 750 former crew, who did not receive an initial allocation of C shares but who were active in CR Program fisheries in the five years preceding implementation of the CR Program, are no longer active in CR Program fisheries due to the significant reduction in the number of vessels participating in CR Program fisheries subsequent to implementation of the CR Program.
- The current eligibility requirement for recent participation in one of the CR Program crab fisheries prevents acquisition of C shares by individuals formerly active in CR Program fisheries, but who are no longer a participant due to the significant fleet contraction and resulting loss of crew positions on crab boats.
- Estimates of available information indicate that approximately 30 percent (70 individuals) of the individuals who received an initial allocation of C share QS (239 individuals) have remained active in the CR program fisheries, while approximately 70 percent (169 individuals) have not remained active in CR program fisheries.
- The regulations intended to keep C share QS holders active in the fisheries are not working due to the exemptions from these active participation requirements for holders of C shares who join a crab harvesting cooperative.

Given this information, the Council determined that the current eligibility requirements for the acquisition of C shares have the effect of preventing some displaced, long-time captains and crew from acquiring C shares and that temporary modifications are necessary to increase the pool of individuals eligible to acquire C shares by transfer. The Council also determined that revisions to the current active participation requirements are necessary to establish reasonable participation requirements for holders of C shares and to ensure that they remain active in the fisheries. At its April 2008 meeting, the Council made final recommendations that formed the basis for Amendment 31 to the FMP and this proposed rule.

After taking action on Amendment 31, the Council received the 5-year review of the CR Program at its December 2010 meeting. The 5-year review identified problems resulting from the insufficient amount of time available for NMFS to resolve IFQ and IPQ application disputes prior to the date by which NMFS must issue IFQ, IPQ, and cooperative IFQ. Based on this information, the Council requested that staff prepare an analysis examining an alternative that would provide NMFS with adequate time to resolve application disputes and decrease the likelihood of potential mismatches of Class A IFQ and IPQ pools. At its April 2011 meeting, the Council recommended three actions: (1) Moving the application deadline for annual IFQ and IPQ permits to an earlier date; (2) shortening the time in which to file an appeal; and (3) providing that an applicant's proof of timely filing for IFQ, IPQ, or cooperative IFQ would create a presumption of timely filing.

The Proposed Actions

This proposed rule would make several changes to regulations governing the acquisition, use, and retention of C share QS under the CR Program. To implement Amendment 31, the proposed rule would: (1) Temporarily expand the eligibility requirements for individuals wishing to acquire C share QS by transfer; (2) establish minimum participation requirements for C share QS holders to be eligible to receive an annual allocation of IFQ; (3) establish minimum participation requirements for C share QS holders to be eligible to retain their C share QS and establish an administrative process for revocation of an individual's C share QS if he or she fails to satisfy the minimum participation requirements; (4) establish a regulatory mechanism to ensure that 3 percent of the TAC for each CR Program crab fishery is allocated as IFQ to holders of C share QS; and (5) remove the prohibition on leasing C share IFQ.

Additionally, this proposed rule would implement a regulatory amendment adopted by the Council. The regulatory amendment would make three changes in the annual application process for IFQ, IPQ, and cooperative IFQ in the CR Program. Unlike the proposed modifications summarized above to implement Amendment 31, these three proposed modifications do not require an amendment to the FMP. They do, however, result from a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and recommendations by the Council and are consistent with the FMP. Specifically, the proposed rule would: (1) Establish June 15 as the deadline for filing annual IFQ, IPQ, and cooperative IFQ applications, which would also increase the amount of time during which NMFS would suspend the processing of IFQ and IPQ transfer applications; (2) shorten the amount of time in which to appeal an initial administrative determination to withhold issuance of IFQ or IPQ from 60 days to 30 days; and (3) provide in the regulations that an applicant's proof of timely filing an application for IFQ, IPQ, or cooperative IFQ would create a presumption of timely filing. Finally, to accommodate the change to the season opening date for the Aleutian Islands golden king crab fishery, the proposed rule would revise the reporting period for RCR Ex-vessel Volume and Value Reports from August 15 through April 30 to August 1 through May 31. Detailed explanations of the proposed regulatory changes are provided in the following paragraphs.

Modify Active Participation Requirements To Acquire C Shares

Current regulations state that to receive C shares by transfer, a person must be an individual with at least 150 days of sea time in a harvest capacity in a U.S. commercial fishery and have been active as a crewmember in one of the CR Program fisheries in the 365 days prior to submission of a transfer application to NMFS. Under this standard, captains and crew displaced by fleet contraction that have not found a position in one of the CR Program fisheries would not be permitted to acquire C shares until they participated in a landing. Based on the significant fleet contraction that occurred at the inception of the CR Program, it is likely that as many as two-thirds of the persons that would have met this standard prior to the implementation of the CR program would not currently meet this standard. To understand the effects of the status quo, the impacted individuals have been separated into two groups: Individuals that received an initial allocation, and individuals that did not receive an initial allocation.

When NMFS implemented the CR Program in 2005, NMFS made initial allocations of C share QS to CFEC permit holders that were individuals (*i.e.,* a natural person who is not a corporation, partnership, association, or other such entity), U.S. citizens, and who met the following historical and recent participation requirements:

(A) Had historical participation as crew in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing per year for any 3 eligibility years under that permit based on data from fish tickets maintained by the State of Alaska.

(B) Had recent participation as crew in the fishery demonstrated by being the individual named on a State of Alaska Interim Use Permit for a QS crab fishery and made at least one legal landing under that permit in any 2 of 3 seasons based on data from fish tickets maintained by the State of Alaska.

Based on these criteria, 239 individuals received initial allocations of C share QS. These individuals were mostly captains because most of the named permit holders on ADF&G fish tickets were captains. Some individuals, who had participation in the crab fisheries similar to the individuals who received C share QS, were not eligible to receive C share QS because they were not the named permit holders on ADF&G fish tickets. These individuals were primarily crewmembers and some captains.

Under the current regulations, those individuals who received initial allocations of C share QS but were unable to find a position on a vessel due to vessel contraction, are unable to acquire C share QS because they do not meet the participation requirements. Also, a number of individuals who received an initial allocation of C share QS are unable to acquire C share QS because they are believed to have not maintained their activity in the fisheries. NMFS believes that since the 2009–2010 fishing year, on average, only approximately 100 individuals who received an initial allocation under the CR Program still participate in the CR Program.

The second group of individuals who are unable to acquire C share QS are those individuals who were not a part of the initial allocation of C share QS in 2005. Under the current regulations, these individuals are unable to acquire C share QS by transfer because they do not meet the current eligibility requirement for participation in a CR crab fishery in the 365 days prior to submission of an application for transfer of C share QS (*i.e.,* the recent participation requirement). The regulations at § 680.41(c)(2)(ii)(C) state that participation as crew can be proved by providing evidence of at least one delivery of a CR crab species through the submission of an ADF&G fish ticket imprinted with the applicant's State of Alaska permit card, an IFQ landing receipt showing the applicant individual as the hired master, or an affidavit from the vessel owner attesting to the applicant's participation in a delivery. Given the participation requirements in the current regulations, captains and crew who: (1) Did not receive an initial allocation, (2) were displaced from CR Program fisheries due to significant fleet consolidation, and (3) have not found work in one of the CR Program fisheries have been unable to demonstrate recent participation in a CR crab delivery and therefore cannot acquire C shares by transfer.

The Council determined that the current regulations do not allow individuals who participated in BSAI crab fisheries before implementation of the CR Program, and who may or may not have qualified for an initial allocation of QS, to reenter the fishery because they cannot qualify under the 365-day recent participation requirement. The Council also determined that current active participation requirements for acquiring C share QS by transfer may be overly burdensome for some captains and crew because of changes in fishing practices and fleet consolidation resulting from implementing the CR Program.

Based on public testimony and input from its Advisory Panel, the Council recommended modifications to the eligibility requirements for acquisition of C share QS by transfer to allow for a transitional eligibility period, during which individuals who have been unable to meet the recent participation requirement would be able to acquire C shares through relaxed participation requirements. The transitional eligibility period also would allow those individuals who are no longer active in the crab fisheries to either begin actively participating in the fishery or divest of their shares. The Council recommended, based on the RIR/IRFA and public testimony, that the transitional eligibility period should be limited to four years. The Council determined, and NMFS agrees, that this period would provide ample time to obtain C shares for those individuals looking to remain active in the fisheries, or divest C shares for those individuals who are no longer interested in participating.

Therefore, this proposed rule would modify the eligibility requirements for the transfer of C share QS, to include an exception where the eligibility requirements are less restrictive than the current requirements. Specifically, the proposed rule would permit during a transitional eligibility period the transfer of C share QS to an individual who is a U.S. citizen with at least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery and who either: (1) Received an initial allocation of CVC or CPC QS, or (2) participated in at least one delivery of crab from a fishery in the CR program in three of the five crab fishing years prior to the start of the CR Program, starting with the 2000/2001 crab fishing year through the 2004/2005 crab fishing year. The transitional eligibility period would be limited to four years.

Under this proposed rule, both initial recipients of C share QS as well as individuals who did not receive an initial allocation but who participated in CR crab fisheries for three of the five years prior to the start of the CR program, would be eligible to receive C share QS. Under the proposed rule, initial recipients of C share QS would be those individuals who received an initial allocation of C share QS regardless of whether those individuals still hold their initial allocation of C share QS. Because the proposed rule does not modify the current eligibility criteria at § 680.41(c)(1)(vii), an individual may acquire C share QS using either the existing eligibility criteria, or the exception proposed in this rule. The intended effect of the proposed change is to temporarily expand the pool of individuals eligible to acquire C share QS by transfer to include individuals who were active in the crab fishery immediately prior to implementation of the program, but who do not meet the current recent participation requirement for activity in the 365 days preceding the transfer. Therefore, under this proposed rule, an individual may be eligible to acquire C share QS under the existing eligibility criteria, as well as the exception that would be added to the regulations under this proposed rule. Acceptable evidence for the proposed new eligibility criteria would be the same as for the current eligibility criteria at § 680.41(c)(2)(ii)(C).

The eligibility criteria added by this proposed rule would exist only for a period of four years from the effective date of this final rule, if Amendment 31 is approved. The proposed relaxation of the eligibility criteria would provide individuals formerly active in CR program fisheries, but who may not have been able to continue active participation in the CR crab fisheries, with an opportunity to acquire C share QS during the period of time in which current holders of C shares would be transitioning into compliance with the active participation requirements for holders of C shares that also would be imposed by this proposed rule. The proposed four-year duration of the relaxed eligibility criteria for acquiring C share QS by transfer coincides with the initial period of time in which C share QS holders would be required to transition into the active participation requirements developed by the Council and proposed in this rule. The Council determined and NMFS agrees that extending the proposed relaxed eligibility criteria beyond this transitional period is not necessary because the transitional period is not meant to allow individuals who have not participated in a CR Program fishery to join at any time because they have some type of historic participation. Instead, the transitional period is intended to be a remedy for those individuals wishing to become C share QS holders that were squeezed out by consolidation and were not able to get back into the fishery. The Council and NMFS determined that four years would be sufficient time for those individuals to acquire C share QS, find a position on a boat, and participate in CR Program fisheries without overwhelming the fisheries with too many individuals and not enough positions. After this transitional period, the relaxed eligibility criteria that would be implemented by this proposed rule would no longer be available.

The benefit to those receiving eligibility for acquiring C share QS during the transitional period and the effects on the market for C share QS could be influenced by several factors. If C share QS holders must be active in the crab fisheries to receive IFQ and retain C share QS, or if C share QS holders must divest after a period of inactivity, both of which would be required under this proposed rule and explained in the following sections, the transitional eligibility period could have minimal effects on individuals receiving the eligibility. An individual who becomes eligible to purchase C share QS during the proposed transitional eligibility period would be expected to satisfy participation requirements for C share QS holders and much less likely to purchase C share QS if the individual would not be eligible to receive IFQ or would be required to divest his or her C share QS holdings after a period of inactivity.

However, the relaxed eligibility criteria may have an adverse effect on individuals currently active as captains and crew in the CR Program fisheries. Competition for C share QS may increase with increased demand and with limited space for crew and captains, individuals may find more competition for jobs. However, individuals who do not currently have a position on a boat may be less interested in obtaining C share QS, and if there are more individuals interested and able to purchase C share QS, this may provide an opportunity for those individuals no longer wanting to remain active in the fishery to sell their shares for a competitive price.

Active Participation Requirements for Annual Issuance of C Share IFQ

The current regulations require individuals who receive C share IFQ to be on board the vessel harvesting those IFQ and prohibit the individual from leasing his or her C share IFQ. However, if a C share QS holder joins a cooperative, the IFQ from that C share QS are allocated to the cooperative, and the ''holder onboard'' requirement as well as the leasing prohibition no longer apply with respect to those IFQ. This disparate treatment of individual holders of C share QS who are members of a cooperative versus holders of C share QS who are not members of a cooperative has had several effects, which were not the intention of the Council when it created the CR Program and C shares. First, the exemptions from the ''holder onboard'' requirement and the leasing prohibition for holders of C shares who are members of a cooperative increase the incentive for holders of C shares to join a cooperative and essentially nullify the requirement for the holders of C shares to be onboard a vessel to harvest their IFQ. Since almost all holders of C share QS annually elect to join a cooperative, they do not have to be onboard the vessel while their C share IFQ are harvested and they are not prohibited from leasing their shares within the cooperative under the current requirements. While the Council intended to encourage the formation of cooperatives and the participation of holders of C shares as members in cooperatives, the Council expected that holders of C share would remain active as crew in the CR Program fisheries regardless of whether they were members of a cooperative. Additionally, NMFS expects that as active holders of C shares retire from captain and crew positions, many may elect to continue to remain members of cooperatives and retain their C share holdings, effectively reducing the number of holders of C shares who are actively participating in the fisheries. Lastly, the market for C shares could be less fluid under the current active participation requirements for crew, because individuals who retire or exit the fisheries are still able to retain their C shares and benefit from them through cooperative membership. NMFS expects that if only active captains and crew would be permitted to hold and receive benefits from C shares, the market for these shares would be more active and fluid, since individuals who retire or exit the fisheries would be required to transfer their C shares.

The Council's original intent for including C share QS in the CR Program was to maintain active participation in the crab fisheries by those QS holders. However, this has not happened. Instead, there is a strong incentive for individuals who hold C shares to join a cooperative and not be onboard the vessel for harvest of their IFQ. These exemptions have made the current participation requirements for holders of C shares essentially ineffective. Examining the activity of holders of C shares in the past few years of the CR Program provides perspective on the effects of the Council's and NMFS' proposed changes. According to RAM catch data, during the 2010/2011 crab fishing year, 108 of the 207 holders of C shares in the CR Program fisheries are estimated to not have participated in the preceding three seasons. NMFS does not know whether these holders of C shares were active as crew, as no data is kept on crew participation. NMFS expects that the share of the C share QS pool held by inactive individuals is a substantial portion of the C share QS pool.

This proposed rule revises the regulations to establish active participation requirements that a C share QS holder must satisfy to receive an annual allocation of C share IFQ. Under this proposed rule, C share QS holders would be required to demonstrate active participation as crew over a rolling, three-year period of time by either: (1) Participating in at least one delivery of crab in a CR program fishery or (2) if the C share QS holder is an individual who received an initial allocation of C share QS, participating at least 30 days in either State of Alaska or Federal Alaska commercial fisheries. Initial recipients of C share QS, who choose to satisfy the proposed requirements through participation as crew in State of Alaska or Federal Alaska commercial fisheries, would need a minimum of 30 days of participation as crew during the three-year period, and that participation could be earned in State of Alaska commercial fisheries, U.S. commercial fisheries conducted in the U.S. Exclusive Economic Zone off Alaska, *i.e.,* Federal Alaska commercial fisheries, or a combination of both. A C share QS holder who does not meet the proposed active participation requirements every three years would not receive an annual IFQ allocation.

In order to demonstrate active participation as crew for issuance of IFQ, a C share QS holder would be required to complete a ''statement of participation'' that would be part of the annual Application for Crab IFQ. Beginning with IFQ applications for the 2015/2016 crab fishing year, a C share QS holder would have to state whether he or she: (1) Participated in at least one delivery of crab in any CR fishery during the crab fishing year immediately preceding the crab fishing year for which the holder is applying, or (2) if the holder was an initial recipient of CVC or CPC QS, participated in State of Alaska or Federal Alaska commercial fisheries during the crab fishing year immediately preceding the crab fishing year for which the QS holder is applying. If a C share QS holder answers ''Yes'' to either question, the holder would be required to attach evidence demonstrating that they participated as a crew member. Acceptable evidence of participation as crew would be ADF&G fish tickets imprinted with the applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner supporting the applicant's participation as crew, or signed receipts for IFQ crab landings on which the applicant was acting as the permit holder's crab IFQ hired master. Although an applicant would be required to complete the statement of participation starting with the 2015/2016 Application for Crab IFQ, participation in the 2014/2015 crab fishing year would not count toward IFQ issuance for the 2018/2019 crab fishing year. The 3-year participation period for C share IFQ issuance would begin with the 2015/2016 crab fishing year, if Amendment 31 is approved. Because Amendment 31 would allow C share QS holders three crab fishing years in which to demonstrate compliance with the proposed participation requirements for issuance of C share IFQ, NMFS would not withhold issuance of C share IFQ for failure to meet participation requirements until the 2018/2019 crab fishing year. The proposed C share IFQ participation requirements would be required to be met on a rolling basis. Therefore, starting with the 2018/2019 annual Application for Crab IFQ and each year thereafter, an applicant for C share IFQ would be required to demonstrate that he or she met the proposed participation requirements during the three crab fishing years preceding the crab fishing year for which the applicant is applying.

The following hypotheticals illustrate the proposed participation requirements relative to the issuance of C share IFQ. In the first hypothetical, Individual Y is not an initial recipient of C share QS but has acquired C share QS by transfer. Under this proposed rule, in order to receive IFQ for the 2018/2019 crab fishing year, Individual Y would have to include evidence demonstrating participation as crew in at least one delivery in a CR Program fishery during the 2015/2016, 2016/2017, or 2017/2018 crab fishing year with his or her annual Application for Crab IFQ. Individual Y participates in deliveries of crab in a CR Program fishery during the 2015/2016 crab fishing year. Therefore, Individual Y would state in his or her Application for Crab IFQ for the 2016/2017 crab fishing year that he or she participated in the previous crab fishing year and would include evidence demonstrating this participation. NMFS would record this information, noting that because Individual Y satisfied the C share IFQ participation requirements in 2015/2016, Individual Y would be eligible to receive C share IFQ under the participation requirements through the 2018/2019 crab fishing year. In each Application for Crab IFQ where Individual Y includes evidence demonstrating participation as crew, NMFS would re-calculate the crab fishing year through which Individual Y would be eligible to receive IFQ. In this hypothetical, Individual Y would have to demonstrate participation as crew again in order to receive C share IFQ for the 2019/2020 crab fishing year.

In the second hypothetical, if a C share QS holder fails to meet the IFQ participation requirements, NMFS would not issue IFQ. In this hypothetical, Individual X is an initial recipient of C share QS and currently holds C share QS. However, he or she has joined a cooperative and no longer actively participates on a fishing vessel. Under this proposed rule, in order to receive IFQ for the 2018/2019 crab fishing year, Individual X would have to once again participate as a member of a harvesting crew for at least one delivery of crab in a CR program fishery or for at least 30 days in a State of Alaska or Federal Alaska commercial fishery prior to submitting his or her Application for Crab IFQ for the 2018/2019 crab fishing year. If Individual X is unable to do this, NMFS would not issue IFQ to Individual X and would send Individual X a C share IFQ Withholding Notice. The notice would inform Individual X that he or she did not meet the active participation requirements in order to receive IFQ. Individual X would have 30 days to provide NMFS with information demonstrating participation as required. If Individual X fails to submit the required information or submits insufficient information, NMFS would issue an Initial Agency Determination (IAD) that would describe NMFS' initial findings and would provide instructions to appeal. If Individual X proceeds with an appeal and is able to provide documentation which shows that he or she participated as required, then NMFS would issue the IFQ. If Individual X is unable to successfully appeal the IAD, then NMFS would not issue the IFQ.

Active Participation Requirements for Retention of C Share QS

In addition to proposed active participation requirements to receive annual allocations of IFQ, C share QS holders also would be required to satisfy active participation requirements in order to retain their C share QS. Under the proposed rule, a C share QS holder who did not receive an initial allocation of C share QS would be required to participate as crew in at least one delivery in one of the CR Program fisheries during any four consecutive crab fishing years in order to retain his or her C share QS. A holder of C share QS who received an initial allocation of C share QS would be required to meet active participation requirements in one of two ways. Under the proposed rule at 50 CFR 680.40(m), a C share QS holder who received an initial allocation of C share QS would be required to participate in as crew (1) at least one delivery in one of the CR Program crab fisheries during any four consecutive crab fishing years, or (2) at least 30 days of fishing in State of Alaska or Federal

Alaska commercial fisheries during any four consecutive crab fishing years in order to retain his or her C share QS. The first crab fishing year that would start the four-year participation period for retention of C share QS would be the 2015/2016 crab fishing year. Similar to the proposed participation requirements for IFQ, the period in which C share QS holders would be required to demonstrate compliance in order to retain their C share QS is a rolling period that would be required to be met during any consecutive four-year period. Because C share QS holders would have four crab fishing years in which to satisfy the proposed participation requirements for retention of C share QS, NMFS would not initiate revocation proceedings until after June 30, 2019. NMFS notes that because the proposed IFQ issuance participation requirements are the same as the proposed QS retention participation requirements but would be required to be met more frequently, a C shareholder who satisfies the proposed IFQ issuance participation requirements would also satisfy the proposed QS retention participation requirements. NMFS would remove revoked C share QS from the C share QS pool.

The following hypothetical illustrates how NMFS would implement the active participation requirements for retention of C share QS in conjunction with the participation requirements for IFQ issuance. Individual Y is not an initial recipient of C share QS but has acquired C share QS by transfer. If Individual Y includes in his or her 2018/2019 Application for Crab IFQ, evidence demonstrating participation as crew in deliveries in a CR Program fishery during the 2017/2018 crab fishing year, NMFS would determine that Individual Y met the participation requirements for IFQ issuance for the 2018/2019 crab fishing year, issue C share IFQ to Individual Y if all other requirements were met, and update its records to reflect that Individual Y is eligible to receive C share IFQ through the 2020/2021 crab fishing year and to retain his or her C share QS through the 2021/2022 crab fishing year. Individual Y would have to meet the proposed participation requirements no later than the 2020/2021 crab fishing year in order to receive IFQ for the 2021/2022 crab fishing year, and would have to meet the proposed participation requirements no later than the 2021/2022 crab fishing year to avoid C share QS revocation proceedings that would be added to 50 CFR 680.43 by this proposed rule. If Individual Y is unable or chooses not to participate as would be required to retain her C share QS, then NMFS would issue a Notice of C Share QS Inactivity to Individual Y, providing him or her with 60 days to provide NMFS with information demonstrating participation as crew that meets the requirements of § 680.40(m). NMFS would issue an IAD if, after this period, NMFS determines that Individual Y has failed to meet the participation requirements. Individual Y would then have an opportunity to administratively appeal the IAD before revocation would become effective. If Individual Y loses the appeal or chooses not to appeal the IAD, then NMFS would revoke all of Individual Y's C share QS.

The proposed rule would not exempt holders of C shares who join a cooperative from the proposed participation requirements to receive C share IFQ or to retain C share QS. Under the proposed rule, all holders of C shares, regardless of whether they have joined a cooperative, would be required to meet the proposed participation requirements for receiving C share IFQ and retaining C share QS. Additionally, the proposed rule would remove the prohibition on leasing C share IFQ, which has been in effect since July 1, 2008. The Council determined and NMFS agrees that the prohibition on leasing C share IFQ as a measure to ensure active participation would no longer be necessary under Amendment 31 because holders of C shares would be required to satisfy specific participation requirements and these participation requirements would apply to all holders of C shares even when they are members of a cooperative. Because the proposed rule would permit the leasing C share IFQ, the hardship exemptions at section 680.41(e)(3) are removed. These hardship exemptions are applicable when a prohibition on leasing C share IFQ is in effect, but would no longer be necessary when the prohibition on leasing C share IFQ is removed.

The Council recommended and NMFS supports revocation of C share QS, if the QS holder continues to be inactive, as an incentive for C share QS holders to divest so that the QS is not held inactive for extended periods of time. As the RIR/IRFA for this action explains at section 2.4.2, some current C share QS holders do not apply for C share IFQ; therefore the proposed active participation requirements for issuance of C share IFQ alone would not be effective at achieving the Council's goal of making holders of C shares active participants in the fisheries. The incentive for inactive C share QS holders to divest their QS could be rather minor absent a potential for revocation. The Council and NMFS anticipate that most inactive C share QS holders would divest before any QS is revoked by NMFS. In addition, active C share QS holders or those active crew members looking to acquire C share QS would also benefit from an increase in QS availability in the market.

Maintenance of C Share IFQ Allocation at Three Percent of the Annual TAC

Under the CR Program, the Council initially allocated 97 percent of the QS pool to vessel owners as catcher vessel owner (CVO) and catcher processor owner (CPO) QS and the remaining three percent as C share QS. Because the amount of IFQ issued annually is a function of the number of QS units and the annual TAC amount for a given fishery, the annual IFQ allocation generally reflects the same 97 percent allocation to vessel owners and three percent to vessel crew. For example, if Person Z owns two percent of the 97 percent of vessel owner QS and the TAC is 3,000,000lbs, then Person Z would receive IFQ for 58,200lbs, because 97 percent of 3,000,000lbs is 2,910,000lbs and two percent of that is 58,200lbs. This allocation method maintains the intended QS and IFQ percentages originally implemented by the Council. However, the proposed revocation of C share QS could affect the 97/3 split, reducing the amount of C share QS to less than three percent of the QS pool and consequently reducing the amount of IFQ allocated to holders of C shares. The Council's proposed revocation of inactive C share QS could cause some C share QS to be removed from the QS pool. Removing C share QS from the QS pool could reduce the C share QS below the three percent level originally established by the Council.

To ensure that C share QS yields IFQ at the three percent level intended by the Council, the proposed rule would modify the regulations to carry the ratio into the calculation of IFQ and specifically allocate 97 percent of the IFQ TAC for each CR crab fishery to CVO and CPO IFQ, and three percent of the IFQ TAC for each CR crab fishery to C share IFQ. The three percent allocation to C share IFQ would be divided among eligible CVC and CPC QS holders based on the proportion of C share QS they own. By separating the calculation of IFQ allocations to C share QS holders from allocation of IFQ to vessel owner QS holders, the allocation of IFQ to C share QS holders would be maintained at three percent of the IFQ TAC, regardless of whether some C share QS is revoked and removed from the C share QS pool.

Modification of IFQ, IPQ, and Cooperative Application Deadlines

Annually, QS holders are required to apply for IFQ either through an individual application, if not joining a cooperative, or through an application submitted by the cooperative manager as part of a cooperative application. Applications are currently due to NMFS Restricted Access Management Program (RAM) by August 1 with most crab fishing seasons beginning on October 15. PQS holders, similarly, must file applications annually by August 1 to receive IPQ. IPQ are not subject to cooperative management. Instead, the applications are filed by the PQS holder with IPQ issued directly to the PQS holder. To aid QS holders and PQS holders in avoiding untimely applications, NMFS maintains applications on its Web site, highlights the deadline on that site, and sends reminders to QS holders and PQS holders near the end of the crab fishing year to apply by the deadline for the next year.

RAM processes annual applications for cooperatives and individual QS holders before issuing IFQ and IPQ. During this period, RAM reviews the applications to ensure information is correctly recorded and QS holder filings are consistent with the applications of cooperatives to which they belong. Ownership and affiliation information that is part of or accompanying applications is reviewed to verify cap compliance and to determine the qualification of applicants to receive Class B IFQ (as QS holders with affiliations with PQS holders are issued Class A IFQ up to the amount of IPQ issued to its affiliates). Reconciliation of these affiliations is necessary to ensure Class A IFQ and Class B IFQ allocations are correctly apportioned for each recipient, as a correction of a Class A IFQ issuance may require reissuance of all IFQ to adjust the proportion of Class A IFQ to Class B IFQ for each recipient. Reissuance of IFQ would result in additional contracting costs, and possible changes in associations depending on choices of IFQ and IPQ holders to maintain the original matches. To ensure correct issuance of IFQ and IPQ (including the prescribed distribution of Class B IFQ derived from PQS holder affiliations), NMFS does not process any transfers of QS and PQS from the date applications for IFQ and IPQ are due until issuance of those IFQ and IPQ.

A further complication in the process is that a large number of applications (about 1/3) are received within just a few days of the filing deadline. It is also common for RAM to receive duplicate and triplicate applications, which may contain discrepancies that must be reconciled with the submitters. Applications must then be compared to QS and PQS holder files to identify persons who have failed to file by the application deadline. Each year, about 30 to 40 persons fail to file applications for IFQ or IPQ, or have issues with their applications. These persons are sent an Initial Administrative Determination (IAD) notifying them of either their failure to file or the discrepancies in their application, and informing them that they will not receive an annual allocation of IFQ or IPQ. Persons receiving an IAD may challenge the findings by notifying NMFS of their intent to appeal within 60 days of the date the IAD is issued.

In the event of an appeal, NMFS upholds the rights of a party to an annual allocation by holding the contested amount of IFQ or IPQ (whichever is the case) until NMFS reaches a Final Agency Action. At times, NMFS is able to reach Final Agency Action prior to the agency's issuance of IFQ and IPQ, thereby allowing the agency to either issue IFQ or IPQ to the successful appellant, or deny issuance to the unsuccessful appellant and re-calculate the amount of IFQ and IPQ to the other eligible applicants. However, if NMFS is unable to reach Final Agency Action prior to the agency's issuance of IFQ and IPQ, then NMFS continues to hold the contested amount of IFQ or IPQ, but issues IFQ and IPQ to the other eligible applicants. If the quota in question is either Class A IFQ or IPQ, then holding that quota could cause a mismatch in those pools with a portion of the corresponding pool rendered unusable. For example, if NMFS does not issue 100 pounds of Class A IFQ, then 100 pounds of IPQ would typically be available for use, but under the current regulations, they cannot be used due to the withheld IFQ. Most quota holders who are denied annual allocations by RAM for failing to submit a timely application typically do not appeal the denial, or in some cases they appeal, but do not prevail. However, regardless of the outcome, due to the length and rigor of the appeal process, it is almost impossible for NMFS to reach Final Agency Action prior to agency issuance of IFQ and IPQ to eligible applicants. When appellants prevail, issuance of the IFQ or IPQ typically occurs after the fishing season has opened and after the IFQ/IPQ matching period has occurred.

To address these timing issues, the Council recommended and NMFS proposes three modifications to the current regulations: (1) Move the IFQ, IPQ and cooperative application deadline to June 15 from the current date of August 1; (2) reduce, from 60 days to 30 days, the amount of time in which to file an appeal of an initial administrative determination (IAD) that denies an allocation of IFQ or IPQ for failure to submit a timely application; and (3) provide that an applicant's proof of timely filing would create an explicit regulatory presumption of timely filing.

The first measure would provide substantially more time (an additional 45 calendar days) between the application deadline and issuance of quota to address disputes and possibly reach final agency action on allocations of IFQ or IPQ. If NMFS could finalize its decisions regarding allocations of IFQ or IPQ prior to agency issuance of quota, the potential for unusable quota would be reduced. Although not a factor at the time the Council recommended moving the application deadline to June 15, the proposed change to the application deadline also would accommodate a recent change by the State of Alaska to the start of the Aleutian Islands golden king crab fishery. The State moved the season opening date for this fishery to August 1 from August 15. Because this fishery has very few QS holders, RAM does not need much time to process applications between the application deadline and agency issuance of IFQ and IPQ.

Because NMFS does not process transfers of QS or PQS during the time when NMFS is processing applications, the proposed June 15 application deadline would impose a restriction on QS and PQS holders. It would increase the amount of time during which the transfer of shares would be suspended, from June 15, rather than August 1, until NMFS issues IFQ or IPQ for that crab fishery, or until the State of Alaska announces that the crab fishery will not open for that crab fishing year. Moving the deadline to June 15 would create a period of approximately three and one-half months during which NMFS would not process transfers. However, the Council and NMFS determined that this period of time would have a minimal effect on fishery participants, since most CR Program fisheries are not open during this period. Also, persons wishing to transfer QS or PQS can agree to transfers that would be processed by NMFS after IFQ and IPQ is issued. Thereby, getting around the time during which the transfers are suspended.

The second measure would reduce the amount of time to appeal IADs that deny an allocation of IFQ or IPQ for failure to submit a timely application from 60 days to 30 days. Under the current regulations, individuals have 60 days to appeal any decision of the agency, including decisions to withhold IFQ or IPQ. The result is that the time period to appeal usually lasts until shortly after the date on which NMFS issues IFQ and IPQ. Even if these appeals are prioritized, appeals can take several weeks to months to be resolved. Consequently, unless a QS or PQS holder chooses not to contest NMFS's decision to reject the application for IFQ or IPQ, there will likely be IFQ and IPQ withheld to satisfy due process requirements and to cover any finding in favor of the appellant. Additionally, depending on the timing, a successful appeal may result in NMFS issuing IFQ/IPQ after the start of, or late into, the crab fishing season for that fishery. The shorter appeal period and earlier application deadline could also allow for the resolution of appeals before or early in the fishing season thereby minimizing disruption to fishing operations.

The Council determined and NMFS agrees that a reduction in time to appeal from 60 days to 30 days for this type of decision would not treat the quota shareholder unfairly. NMFS makes every effort to ensure that participants receive notice of application deadlines and, typically, the administrators attempt to locate individuals failing to apply to ensure that failure is intentional. The issue in this type of appeal is whether the quota shareholder submitted a timely application; it is not whether a quota shareholder meets standards for initial eligibility to receive quota share. The shorter appeal period would apply only to IADs that deny an allocation of IFQ or IPQ for failure to submit a timely application and is intended to reduce the portions of the IFQ and IPQ pools that must be reserved by ensuring that administrators know which QS and PQS holders are disputing a denial, and possibly allowing for the resolution of appeals before or early in the season.

This proposed rule also would substitute the appeals process set forth at § 679.43 with the appeal procedures at 15 CFR part 906. Under this proposed rule, an applicant would be able to appeal any CR Program IAD pursuant to the appeal procedures at 15 CFR part 906. NMFS has established a National Appeals Office (NAO) located at NMFS Headquarters in Silver Spring, Maryland. In 2014, NMFS published a final rule implementing the rules of procedure for NAO appeals in 15 CFR part 906. (79 FR 7056, Feb. 6, 2014). The appeal procedures in 15 CFR part 906 are mandatory for appeals in limited access privilege programs (LAPPs) under section 303A of the Magnuson-Stevens Act. 15 CFR 906.1(b). Section 303A applies only to limited access privilege programs that were adopted after January 12, 2007, the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. 16 U.S.C. 1853a. The CR Program was implemented in March 2005; therefore, CR Program appeals are not required to be heard under the procedural rules at 15 CFR part 906. NMFS may, however, request that NAO decide appeals in programs where NAO does not have mandatory jurisdiction. 15 CFR 906.1(d). NMFS proposes to use NAO for appeals of CR Program IADs and to adopt 15 CFR part 906 as the procedural rules for CR Program appeals. In the past, NMFS Alaska Region had its own appeals office and its own procedural rules for appeal in 50 CFR 679.43. However, NMFS Alaska Region no longer has its own appeals office and therefore is opting to use the NAO and the procedural rules for the NAO.

The third measure would provide an individual who possesses proof of timely filing of an application for IFQ or IPQ the presumption of having done so in instances where that NMFS has no record of receiving a complete and timely application. Proof could be in the form of a registered mail receipt if the application is mailed to NMFS, a confirmation page if the application is faxed to NMFS, or a delivery receipt from a commercial carrier. This proposed measure would serve to remind QS and PQS holders to maintain proof of their timely filing. By maintaining proof, the applicant may be able to avert a dispute concerning whether such filing was made; applicants who maintain adequate records of filing would likely resolve any dispute prior to receiving an IAD that an application was not filed. If the applicant filed an appeal, the applicant's documentation of timely filing would support the appeal and could speed resolution of the appeal.

Revisions to Registered Crab Receiver Reports

As was mentioned in the previous section, the State of Alaska adjusted the dates of the Aleutian Islands golden king crab season so that the fishery will now open on August 1 instead of August 15. Currently, regulations at § 680.5(m) require a RCR that also operates as a shoreside processor or stationary floating crab processor and receives and purchases landings of CR Program crab, to submit annually to NMFS a complete Ex-vessel Volume and Value Report for each reporting period in which the RCR receives CR Program crab. The current reporting time begins August 15 and extends through April 30, which coveres all CR Program crab fishing seasons. If NMFS were to maintain the same reporting period, it would no longer cover all crab fishing seasons, and any deliveries of CR Program crab prior to August 15 and after April 30 would not be included in the report. Therefore, this proposed rule would change the reporting period to August 1 through May 31 to cover all CR program crab fisheries. The adjusted reporting period will allow the RCR to capture any deliveries that occur from the start of the season and any deliveries that occur shortly after the season has closed. The proposed rule would also adjust the due date for the report from May 15 to May 31.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 31, the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by Section 603 of the Regulatory Flexibility Act (RFA) that describes the economic impact the provisions of Amendment 31 (*i.e.,* C share acquisition, use, and retention) in this proposed rule, if adopted, would have on small entities. Copies of the IRFA prepared for these provisions of Amendment 31 within the proposed rule are available from NMFS (see **ADDRESSES**). The IRFA incorporates by reference an extensive RIR/FRFA prepared for Amendments 18 and 19 to the FMP that detailed the impacts of the CR Program on small entities.

The IRFA for the Amendment 31 provisions of the proposed action describes the action, why this action is being proposed, the objectives and legal basis for the proposed rule, the type and number of small entities to which the proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of the proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic impact of the proposed rule on small entities. A summary of the RIR/IRFA follows.

To implement Amendment 31, this proposed rule would relax the eligibility requirements to allow individuals who are currently not eligible to acquire C shares by transfer to become eligible, for a transitional period, for such transactions. This action would also establish minimum participation requirements for C share QS holders to be eligible to receive an annual allocation of Individual Fishing Quota (IFQ); establish minimum participation requirements for C share QS holders to be eligible to retain their C share QS and establish an administrative process for revocation of an individual's C share QS, if he or she fails to satisfy the minimum participation requirements; establish a regulatory mechanism to ensure that three percent of the total allowable catch (TAC) for each CR Program crab fishery is allocated as IFQ to holders of C share QS; and remove the prohibition on leasing C share IFQ.

The entities directly regulated by this action are individuals who currently hold C share QS, and individuals who were at one time active in the crab fisheries as captain and crew prior to the implementation of the CR Program but who are no longer active as captain or crew. The Small Business Administration defines a small commercial finfish fishing entity as one that has annual gross sales of less than $19 million; a shellfish fishing small entity is one with less than $5 million fishing operations are small if they have less than $7 million in gross revenue (78 FR 37398, July 22, 2013).

The IRFA estimates that 179 individuals currently hold C shares. Of which, 70 are estimated to have been part of the 239 individuals who received an initial allocation of C shares based on their historical participation record. The IFRA also estimates that there are 750 individuals who were active in the crab fisheries as captain and crew prior to the implementation of the CR Program but who are no longer active as captain or crew; the proposed rule would allow those individuals to acquire C shares by transfer for a period of four years. Thus, the IRFA estimates that approximately 1100 individuals (750 who were active prior to rationalization, 239 who were initial recipients, and 109 who have since acquired C shares), would be impacted by the change in the regulations regarding the eligible individuals who would be able to acquire C shares by transfer in this proposed rule.

Based on the SBA's size standard, the Council and NMFS believe that all holders of C shares are small entities for purposes of the RFA.

Three alternatives, including the no action alternative, were considered to relax the eligibility requirements for the acquisition of C shares by transfer. The first alternative creates eligibility for entities that received an initial allocation of C shares. The second alternative creates eligibility for entities with historical participation in the CR Program fisheries. The Council decided to select both of the action alternatives to full expand the eligibility to encapsulate all those entities who had historically participated in the crab fisheries prior to rationalization. The Council did not consider further expanding the eligibility to include entities that do not have any type of historical participation in the crab fisheries, because the original intent in establishing C shares was to provide an opportunity for entities with a connection to the crab fisheries, through participation, to own shares.

This proposed rule contains a provision that no C shares would be revoked until 5 years after implementation of the amendment to the FMP. The Council intended that this provision would mitigate negative effects on individuals whose shares may be revoked by this action. The Council and NMFS considered two other options to delay revocations. Under the first, no revocations would have taken place until 5 years after implementation of the CR Program, which would have been the year 2010. The second option extended the period to 10 years after implementation of the CR Program, which would have been the year 2015. The preferred alternative would begin revocations 5 years after this proposed amendment is implemented. This alternative was selected because it would provide holders of C shares with certainty about the rules that will govern C shares and with time to consider business plans for their C shares. The preferred alternatives give holders of C shares time to plan whether to meet the new active participation requirements and retain their C shares or whether to divest their share holdings.

For the proposed provision requiring active participation to receive annual IFQ from C shares, the preferred alternative requires active participation over a 3-year period. For the proposed provision requiring active participation requirement to retain C shares, the preferred alternative requires active participation over a 4-year period. Three categories of alternatives were considered for this provision: the status quo alternative, which essentially has no active participation requirement because holders of C shares can and do assign their shares to cooperatives; alternatives that would require less or no active participation in the fisheries to maintain C share holdings; and alternatives that would require greater levels of participation as crew.

NMFS concluded that the status quo and the alternatives that require less participation to maintain C share holdings are inconsistent with the Council's intent to ensure that C shares are held by individuals who are active in the fisheries and to create a pool of C shares for use exclusively by individuals who are active in the fisheries. NMFS examined alternatives that required higher levels of participation to maintain C share holdings or that required participation exclusively in CR Program fisheries. NMFS concluded that these alternatives unduly constrained holders of C shares, given the fleet consolidation and other changes in crab fishing under the CR Program. With fewer vessels active in the fisheries, greater competition for crew jobs is an obstacle to maintaining active participation in the CR Program fisheries. By allowing individuals to meet a minimal landing requirement to maintain their active participation status and by allowing individuals who are initial recipients of C shares to meet the active participation requirements through fishing in non-crab commercial fisheries in Alaska, the preferred alternative would allow individuals to miss some seasons, when crew jobs may be difficult to secure. NMFS concluded that the preferred alternative reaches a reasonable balance between alternatives that would allow extended absences from active participation in the fisheries and alternatives that would require greater participation in the CR Program fisheries, an approach which fails to recognize the nature of the market for employment in the CR Program fisheries.

The Council did not consider an alternative to the regulatory mechanism to ensure three percent of the TAC for each CR Program fishery is allocated to holders of C share QS. Under the current regulations, approximately three percent of the IFQ pool is allocated as C share IFQ and 97 percent is allocated as owner share IFQ, as is required by the CR Program. However, with the new active participation provisions, and the potential for IFQ not to be allocated to entities which do not meet these provisions, there is a possibility that the C share IFQ allocation would be reduced. To ensure the C share IFQ pool remains at its intended levels, the Council requested a mechanism put in place to maintain the C share IFQ pool at three percent of the IFQ pool, regardless of whether some holders of C share receive their annual IFQ allocation.

This rule also proposes several regulatory amendments that are not contained in Amendment 31 to the FMP. Specifically, the proposed rule would establishes an earlier deadline for filing annual IFQ, individual processing quota (IPQ), and crab harvesting cooperative IFQ applications, which would increase the amount of time during which NMFS would suspend the processing of IFQ and IPQ transfer applications; shorten the amount of time in which to appeal an initial administrative determination to withhold issuance of IFQ or IPQ; and provide in the regulations that an applicant's proof of timely filing for IFQ, IPQ, or cooperative IFQ would create a presumption of timely filing. Finally, the proposed rule would revise the reporting period and due date for CR Program registered crab receiver (RCR) Ex-vessel Volume and Value Reports.

These provisions would directly regulate holders of QS, PQS and cooperatives formed under the CR Program. Each of the cooperatives in the program includes from several to hundreds of QS holders as members and has revenues in excess of the small entity threshold; however, during the 2010–2011 fishing season, 64 QS holders elected not to join cooperatives. These 64 QS holders are all small entities for RFA purposes.

The IRFA based its estimates of small entities holding PQS on the number of employees of PQS-holding entities. As of 2011, 21 entities hold PQS. The IRFA estimated large entities, based on available records of employment and knowledge of foreign ownership of processing companies. Of these 21 entities, the IRFA estimated that 10 are large entities and 11 are small entities for RFA purposes.

The IRFA for this action did not analyze additional alternatives to the second proposed action, because this proposed action is a technical change to conform to changes by ADF&G to the Aleutian Islands Golden King Crab season. The Council did consider whether application deadlines earlier or later than the preferred alternative would be appropriate. The IRFA identified the June 15 deadline as the most practical date. Dates later than June 15 are likely to provide limited benefit over the current August 1 deadline. Dates later than June 15 are also unlikely to provide a benefit of avoiding withheld IFQ and IPQ that arise from unresolved administrative determinations of those allocations. The effects of unissued IFQ and IPQ shares may be more likely to fall on small entities because small entities may have less power to gain matching commitments from larger harvesting and processing interests for use of their Class A IFQ and IPQ to match with shares held by small entities. Similarly, the shortened 30-day period for appealing initial administrative determinations to withhold IFQ or IPQ is likely to have little effect on small entities' decisions whether to appeal a denial, as the filing of an appeal is a relatively straightforward process. Small entities may be the beneficiaries of reduced mismatched IFQ and IPQ that could be avoided through achieving final agency action earlier.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB Control No. 0648–0514. Public reporting burden per response is estimated to average 2 hours for the Application for BSAI Crab Eligibility to Receive QS/PQS or IFQ/IPQ by Transfer; 2.5 hours for Application for Annual Crab Permit IFQ; 2.5 hours for Application for Annual Crab Permit IPQ; 30 minutes for Application for Converted CPO QS and CPO IFQ; 2.5 hours for Application for Crab Harvesting Cooperative IFQ Permit; 4 hours for Appeal for Denial of Application; 2.5 hours for Application for Transfer of Crab IFQ; 2.5 hours for Application for Transfer of Crab IPQ permit; 2 hours for the Crab Rationalization Program Registered Crab Receiver Ex-vessel Volume and Value Report; and 2 hours for Application for Transfer of a crab QS or PQS including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Send comments on these or any other aspects of the collection of information, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285. Notwithstanding any other provision of the law, no individual is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 18, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.4, revise paragraphs (f)(1) and (n)(1)(i), and add paragraph (q) to read as follows:

§ 680.4 Permits.

* * * * *

(f) * * *

(1) A complete application must be received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which a person is applying to receive IFQ or IPQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the person will not receive IFQ or IPQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

* * * * *

(n) * * *

(1)(i) A complete application must be received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which a person or crab harvesting cooperative is applying to receive converted CPO QS and the IFQ derived from that converted CPO QS. If a complete application is not received by NMFS by this date, or postmarked by this date, the person or crab harvesting cooperative will not receive converted CPO QS and the IFQ derived from that converted CPO QS for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

* * * * *

(q) *Initial administrative determination (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to establish that the applicant meets the requirements, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 30-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal under the appeals procedures set forth at 15 CFR part 906. If an applicant appeals an IAD denying an Application for Annual Crab IFQ, IPQ, or harvesting Cooperative IFQ Permit because the application was not timely filed, the appeal must be filed within 30 days after the date the IAD is issued. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive crab IFQ or IPQ until after the final resolution of that appeal in the applicant's favor.

■ 3. In § 680.5, revise paragraphs (m)(2) and (3) as follows:

§ 680.5 Recordkeeping and reporting (R&R).

* * * * *

(m) * * *

(2) *Reporting period.* The reporting period of the CR RCR Ex-vessel Volume and Value Report shall extend from August 1 through May 31 of the following year, inclusive.

(3) *Due Date.* A complete CR RCR Ex-vessel Volume and Value Report must be received by the Regional Administrator no later than May 31 of the reporting period in which the RCR received CR crab.

* * * * *

■ 4. In § 680.21, revise paragraphs (b)(1), (b)(2) introductory text, and (d)(1) as follows:

§ 680.21 Crab harvesting cooperatives.

* * * * *

(b) * * *

(1) *June 15 application deadline.* A complete application must be received together with a signed annual application for crab IFQ/IPQ permit forms of all members of the crab harvesting cooperative, by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which the crab harvesting cooperative is applying to receive IFQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the crab harvesting cooperative will not receive IFQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing.

(2) *Contents.* A complete application must contain the following information:

* * * * *

(d) * * *

(1) *Transfer of QS.* A member of a crab harvesting cooperative may acquire or divest QS at any time in accordance with the transfer procedures in § 680.41. However, transfers of QS that occur after the June 15 deadline for crab harvesting cooperative IFQ permit applications will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for that crab fishing year.

* * * * *

■ 5. In § 680.40,

■ a. Revise paragraph (g);

■ b. Revise paragraph (h)(1); and

■ c. Add paragraph (m) to read as follows:

§ 680.40 Crab Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance.

* * * * *

(g) *Annual allocation of IFQ.*

(1) *General.* IFQ is assigned based on the underlying QS. Except for CVC and CPC QS permit holders who fail to meet the participation requirements at paragraph (g)(2) of this section, the Regional Administrator shall assign crab IFQs to each person who holds QS and submits a complete annual application for crab IFQ/IPQ permit as described under § 680.4. IFQ will be assigned to a crab QS fishery with the appropriate regional designation, QS sector, and IFQ class. This amount will represent the maximum amount of crab that may be harvested from the specified crab QS fishery by the person to whom it is assigned during the specified crab fishing year, unless the IFQ assignment is changed by the Regional Administrator because of an approved transfer, revoked, suspended, or modified under 15 CFR part 904.

(2) *Eligibility for CVC and CPC IFQ.* For each crab fishing year after June 30, 2018, CVC and CPC QS will yield IFQ if the individual holding that CVC or CPC QS permit:

(i) Has participated as crew in at least one delivery of crab in any CR crab fishery during the three crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application; or

(ii) Was an initial recipient of CVC or CPC QS and participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or in a U.S. commercial fishery in the U.S. Exclusive Economic Zone off Alaska during the three crab fishing years preceding the crab fishing year for which the individual is filing an annual crab IFQ permit application. Individuals may combine participation as crew in State and federal commercial fisheries to meet this requirement.

(3) *Withholding of CVC or CPC IFQ.* Beginning July 1, 2018, the Regional Administrator will withhold issuance of CVC or CPC IFQ to an individual who has not met the participation requirements set forth in paragraph (g)(2) of this section. The Regional Administrator will withhold an individual's CVC IFQ or CPC IFQ in accordance with the procedures set forth in paragraphs (g)(3)(i) and (ii) of this section.

(i) *Notice of C Share IFQ Withholding.* The Regional Administrator will issue a Notice of C Share IFQ Withholding to an individual holding CVC or CPC QS if, after reviewing the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, the Regional Administrator determines that the CVC or CPC QS holder has failed to meet the participation requirements in paragraph (g)(2) of this section. A CVC or CPC QS holder who receives such a Notice of C Share IFQ Withholding will have 30 days to provide the Regional Administrator with information demonstrating participation as crew that meets the requirements of paragraph (g)(2) of this section.

(ii) *Initial administrative determination (IAD).* The Regional

Administrator will prepare and send an IAD to the CVC or CPC QS holder following the expiration of the 30-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the CVC or CPC QS holder fails to demonstrate participation as crew and is insufficient to rebut the information included in the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, or if the additional information or evidence is not provided within the time period specified in the Notice of C Share IFQ Withholding. The IAD will explain the basis for the withholding of IFQ. A CVC or CPC QS holder who receives an IAD withholding IFQ may appeal under the appeals procedures set forth at 15 CFR part 906. A CVC or CPC QS holder who avails himself or herself of the opportunity to appeal an IAD withholding IFQ will not receive crab IFQ until after the final resolution of that appeal in the QS holder's favor.

(h) * * *

(1) *General.* (i) The annual allocation of IFQ to any person (p) in any crab QS fishery (f) will be based on the TAC of crab for that crab QS fishery less the allocation to the Western Alaska CDQ Program (''CDQ Reserve'') and Western Aleutian Islands golden king crab fishery. Expressed algebraically, the annual IFQ allocation formula is as follows:

(A) $\text{IFQ TAC}_f = \text{TAC}_f - (\text{CDQ Reserve}_f + \text{Allocation for the Western Aleutian Island golden king crab fishery})$

(B) $\text{IFQ}_{pf} = \text{IFQ TAC}_f \times (\text{QS}_{pf}/\text{QS pool}_f)$

(ii) *CVO, CPO, CVC, and CPC IFQ.* Each year, 3 percent of the IFQ TAC_f will be allocated as CVC IFQ or CPC IFQ and 97 percent of the IFQ TAC_f will be allocated as CVO IFQ or CPO IFQ. Expressed algebraically, the formulas for the annual IFQ allocations are as follows:

(A) $\text{CVC/CPC IFQ}_f = \text{IFQ TAC}_f \times 0.03$

(B) $\text{CVO/CPO IFQ}_f = \text{IFQ TAC}_f \times 0.97$

* * * * *

(m) *Participation requirements for retention of CVC QS and CPC QS.* (1) Beginning July 1, 2019, and each crab fishing year thereafter, individuals allocated CVC QS or CPC QS must meet the participation requirements set forth in paragraph (m)(2) of this section in order to retain their CVC QS or CPC QS.

(2) An individual issued a CVC QS or CPC QS permit must demonstrate to NMFS that he or she:

(i) Has participated as crew in at least one delivery of crab in any CR crab fishery during the previous four consecutive crab fishing years; or

(ii) Was an initial recipient of CVC QS or CPC QS and participated as crew in at least 30 days of fishing in a commercial fishery managed by the State of Alaska or in a U.S. commercial fishery in the U.S. Exclusive Economic Zone off Alaska during the previous four consecutive crab fishing years. Individuals may combine participation as crew in State and Federal commercial fisheries to meet this requirement.

(3) An individual issued a CVC QS or CPC QS permit may include information demonstrating compliance with the participation requirements in paragraph (m)(2) of this section with the individual's annual Application for Crab IFQ.

(4) If an individual issued a CVC QS or CPC QS permit fails to meet the participation requirements in paragraph (m)(2) of this section, NMFS will revoke all of the individual's CVC QS or CPC QS in accordance with 50 CFR 680.43.

■ 6. In § 680.41, revise paragraphs (b)(1), (c)(1)(vii) and (viii), (c)(2)(ii)(C), and (e)(3) to read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(b) * * *

(1) *Application.* An application is required to transfer any amount of QS, PQS, IFQ, or IPQ. A transfer application will not be approved until the necessary eligibility application has been submitted and approved by NMFS in accordance with paragraph (c) of this section. The Regional Administrator will not approve any transfers of QS, PQS, IFQ, or IPQ in any crab QS fishery from June 15 until either the date of the issuance of IFQ or IPQ for that crab QS fishery, or the date on which the State of Alaska announces that a crab QS fishery will not open for that crab fishing year.

* * * * *

(c) * * *

(1) * * *

Quota type	Eligible person	Eligibility requirements
* * *	* *	* *
(vii) CVC or CPC QS	An individual	(A) Who is a U.S. citizen with: (*1*) At least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery, and (*2*) Recent participation as crew in at least one delivery of crab in a CR crab fishery in the 365 days prior to submission of the application for eligibility, (B) From [*EFFECTIVE DATE OF FINAL RULE IMPLEMENTING AMENDMENT 31*] until [*DATE 4 YEARS AFTER EFFECTIVE DATE OF FINAL RULE IMPLEMENTING AMENDMENT 31*], CVC or CPC QS also may be transferred to an individual who is a U.S. citizen with: (*1*) At least 150 days of sea time as part of a harvesting crew in any U.S. commercial fishery, and (*2*) Who either (*i*) Received an initial allocation of CVC or CPC QS; or (*ii*) Participated in at least one delivery of crab in a CR crab fishery in any 3 of the 5 crab fishing years starting on July 1, 2000, through June 30, 2005.
(viii) CVC or CPC IFQ	All eligible individuals for CVC or CPC QS.	According to the requirements in paragraph (c)(1)(vii) of this section.

* * * * *

(2) * * *

(ii) * * *

(C) *Eligibility for CVC or CPC QS/IFQ.* Indicate (YES or NO) whether this application is intended for a person who wishes to buy CVC or CPC QS/IFQ. If YES, provide evidence demonstrating that the applicant meets the criteria set forth in paragraph (c)(1)(vii) of this section 680.41. Acceptable evidence is limited to an ADF&G fish ticket imprinted with the applicant's State of Alaska permit card and signed by the applicant, an affidavit from the vessel owner, or a signed receipt for an IFQ crab landing on which the applicant was acting as the permit holder's crab IFQ hired master.

* * * * *

(e) * * *

(3) *IFQ derived from CVC QS or CPC QS.* (i) IFQ derived from CVC or CPC QS may be transferred by lease on an annual basis.

* * * * *

■ 7. Revise § 680.43 to read as follows:

§ 680.43 Revocation of CVC and CPC QS.

(a) Beginning July 1, 2019, the Regional Administrator will revoke all CVC QS and CPC QS held by an individual who has not met the participation requirements set forth in § 680.40(m). The Regional Administrator will revoke an individual's CVC QS or CPC QS in accordance with the procedures set forth in this section.

(b) *Notice of C Share QS Inactivity.* The Regional Administrator will issue a Notice of C Share QS Inactivity to an individual holding CVC or CPC QS if, after reviewing the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, the Regional Administrator determines that the CVC or CPC QS holder has failed to meet the participation requirements in § 680.40(m). A CVC or CPC QS holder who receives such a Notice will have 60 days to provide the Regional Administrator with information demonstrating participation as crew that meets the requirements of § 680.40(m).

(c) *Initial administrative determination (IAD).* The Regional Administrator will prepare and send an IAD to the CVC or CPC QS holder following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the CVC or CPC QS holder fails to demonstrate participation as crew and is insufficient to rebut the information included in the CVC or CPC QS holder's Applications for Annual Crab IFQ Permit, or if the additional information or evidence is not provided within the time period specified in the Notice of C Share QS Inactivity. The IAD will explain the basis for the revocation determination. A CVC or CPC QS holder who receives an IAD for revocation may appeal under the appeals procedures set forth at 15 CFR part 906. A CVC or CPC QS holder who avails himself or herself of the opportunity to appeal an IAD for revocation will not receive crab IFQ or IPQ until after the final resolution of that appeal in the QS holder's favor.

[FR Doc. 2014–30155 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 247

Wednesday, December 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Information Collection Request: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Reinstatement Without Change)

AGENCY: Administrative Conference of the United States.

ACTION: 30-day notice of submission to the Office of Management and Budget of a request for reinstatement without change of a previously approved information collection and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process of seeking feedback from the public on service delivery, the Administrative Conference of the United States (''ACUS'' or ''the Conference'') has submitted to the Office of Management and Budget (OMB) a request for reinstatement of a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' previously approved under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted by January 23, 2015.

ADDRESSES: Interested persons may submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the ACUS Desk Officer, and sent by email to *oira_submission@omb.eop.gov,* or by fax to 202–395–5806, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Please send a copy of your comments to ACUS, 1120 20th Street NW., Suite 706 South, Washington, DC 20036, or by email addressed to *dpritzker@acus.gov.*

FOR FURTHER INFORMATION CONTACT: David Pritzker, Deputy General Counsel, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone (202) 480–2080.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Control Number: 3002–0006.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** on October 9, 2014 (79 FR 61047).

Below we provide the Conference's projected average estimates for the next three years:

Current Action: Reinstatement without change of a previously approved collection of information.

Type of Review: Reinstatement without change.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average expected annual number of activities: 6.

Average number of respondents per activity: 110.

Annual responses: 660.

Frequency of response: Once per request.

Average minutes per response: 6–60.

Burden hours: 210–285.

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 Office of Management and Budget control number.

Dated: December 18, 2014.

Shawne McGibbon,

General Counsel.

[FR Doc. 2014–30058 Filed 12–23–14; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0044]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Public Meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that the National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on

January 13 and 14, 2015, to review and discuss FSIS's identification and management of chemical hazards within the National Residue Program (NRP). The NRP is an interagency program administered by FSIS that is designed to identify, rank, and test for chemical contaminants in meat, poultry, and egg products. FSIS is seeking input on whether or not it should change the way it categorizes chemical hazards and allocates resources. NACMPI will also review and discuss the Cost Calculation Model that FSIS developed with the Economic Research Service (ERS), which provides detailed data about the costs of major foodborne illnesses in the United States.

DATES: The meeting is scheduled for January 13–14, 2015 from 9:00 a.m. to 5:00 p.m. Eastern Time. NACMPI will meet from 8:00 a.m. to 9:00 a.m. on January 13th for administrative purposes; this portion of the meeting is not open to the public.

ADDRESSES: The meeting will be held in the Auditorium at the Patriot Plaza III building, 355 E. Street SW., Washington, DC 20024. The auditorium is located on the first floor. Please note that due to increased security measures at the Patriot Plaza III, all persons wishing to attend are strongly encouraged to register in advance.

FOR FURTHER INFORMATION CONTACT: Natasha Williams, Program Specialist, Designated Federal Officer, via Email: *Natasha.Williams@fsis.usda.gov; Telephone:* 202–690–6531; or Fax: (202) 690–6519, regarding specific questions about the committee or this meeting. General information about the committee can also be found at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi.*

SUPPLEMENTARY INFORMATION:

Background

NACMPI provides advice and recommendations to the Secretary on meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e). A copy of the current charter and other information about NACMPI can be found at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi.*

The U.S. Department of Agriculture's Deputy Under Secretary for Food Safety is the chairperson of NACMPI. Membership of NACMPI is drawn from distinguished representatives of consumer groups; producers; processors; and marketers from the meat, poultry and egg product industries; State and local government officials; and academia. The current members of NACMPI are: Dr. Michael Crupain, Consumer Product Safety and Sustainability; Mr. George Wilson, STOP Foodborne Illness; Dr. Tanya Roberts, Center for Foodborne Illness Research and Prevention; Mr. Kurt Brandt, United Food and Commercial Workers International Union; Dr. Dustin Oedekoven, South Dakota Animal Industry Board; Dr. Krzysztof Mazurczak, Illinois Department of Agriculture; Dr. Monique Wiggins, Georgia Department of Agriculture; Mr. Michael Frances Link Jr., Ohio Department of Agriculture; Dr. Manpreet Singh, Purdue University; Dr. Randall K. Phebus, Kansas State University; Dr. Patricia Curtis, Auburn University; Mr. Brian Sapp, White Oak Pastures, Inc.; Ms. Sherri Jenkins, JBS, USA, LLC; Dr. Betsy Booren, American Meat Institute; Dr. Alice Johnson, Butterball, LLC; Ms. Sherika Harvey, Mississippi Department of Agriculture; Dr. Carol L. Lorenzen, University of Missouri; Dr. Michael L. Rybolt, Hillshire Brands Company; Dr. John A. Marcy, University of Arkansas; and Mr. Christopher A. Waldrop, Consumer Federation of America.

On January 13 and 14, 2015, NACMPI will review and discuss FSIS's identification and management of chemical hazards within the NRP and the FSIS and ERS Cost Calculation Model.

FSIS has administered the NRP by collecting meat, poultry, and egg product samples and analyzing the samples for specific chemical compounds at FSIS laboratories since 1967 for meat and poultry, and 1995 for egg products. Chemical compounds tested in the program include approved and unapproved veterinary drugs, pesticides, and environmental compounds.

The NRP is designed to: (1) Provide a structured process for identifying and evaluating chemical compounds of concern in food animals; (2) analyze chemical compounds of concern; (3) collect, analyze, and report results; and, (4) identify the need for regulatory follow-up subsequent to the identification of violative levels of chemical residues.

The NRP consists of three separate, but interrelated, chemical residue testing programs: Scheduled sampling, inspector-generated sampling, and import sampling. This basic structure has been in existence since 1967. These testing programs provide data for FSIS to detect chemical residues of concern and have been modified over the years to respond to emerging and re-emerging chemical residue concerns and improved testing methodologies.

The Cost Calculation Model provides detailed data about the costs of major foodborne illnesses in the United States, updating and extending previous ERS research. It is available on ERS's Web site at *http://www.ers.usda.gov/data-products/cost-estimates-of-foodborne-illnesses/documentation.aspx#resources.* It includes:

1. Detailed identification of specific disease outcomes for foodborne infections caused by 15 major pathogens in the United States;
2. Associated outpatient and inpatient expenditures on medical care;
3. Associated lost wages; and
4. Estimates of individuals' willingness to pay to reduce mortality resulting from these foodborne illnesses acquired in the United States.

Disease outcomes include both acute illness and chronic disease that sometimes follow these acute illnesses. These 15 pathogens account for over 95 percent of the illnesses and deaths from foodborne illnesses acquired in the United States for which the U.S. Centers for Disease Control and Prevention (CDC) can identify a pathogen cause. These estimates build on CDC estimates of the incidence of foodborne disease; peer-reviewed synthesis of data on medical costs, and economic, medical and epidemiological literature; and publicly available data on wages.

The Cost Calculation Model provides FSIS and other Federal agencies with a set of consistent, peer-reviewed estimates of the costs of foodborne illness that can be used in analyzing the impact of Federal regulation. It also provides other stakeholders and the general public with a means of understanding the relative impact of different foodborne infections in the United States. Cost estimates of foodborne illnesses have been used in the past to help inform food-safety policy discussions.

The two issues described above will be presented to the full Committee. The Committee will then divide into two subcommittees to discuss the issues. Each subcommittee will provide a report of their comments and recommendations to the full Committee before the meeting concludes on January 14, 2015.

Register for the Meeting: The public is asked to pre-register for the meeting. Your pre-registration must state: The name of each person in your group; organization or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Submit registrations to *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi/nacmpi-meetings/nacmpi-registration.* FSIS will also accept walk-in registrations. Members of the public requesting to give oral comment to the Committee must sign in at the registration desk.

PUBLIC COMMENTS: Written public comments may be mailed to USDA/FSIS, 1400 Independence Ave SW., Mail Stop 3778, Washington, DC 20250; submitted via fax (202) 690–6519; or by Email at: *NACMPI@fsis.usda.gov.* All written comments must arrive by January 23, 2015. Oral comments are also accepted (see instructions under ''Register for the Meeting'' above).

Availability of Materials for the Meeting: All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/advisory-committees/nacmpi/nacmpi-meetings* to learn more about the agenda for the meeting or reports resulting from this meeting.

Meeting Accommodations: USDA is committed to ensuring that all interested persons are included in our events. If you are a person with a disability and would like to request reasonable accommodations to participate in this meeting, please contact Natasha Williams via Telephone: (202) 690–6531; Fax (202) 690–6519; or Email: *Natasha.Williams@fsis.usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

USDA Nondiscrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail

U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax

(202) 690–7442.

Email

program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202)720–2600 (voice and TDD).

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on December 19, 2014.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2014–30219 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of Request for Approval of a New Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Foreign Agricultural Service to request approval for a new information collection for the Agriculture Wool Apparel Manufacturers Trust Fund.

DATES: Comments on this notice must be received by February 23, 2015 to be assured of consideration.

ADDRESSES: FAS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- Mail, including CD–ROMs, etc.: Send to Benjamin Chan, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW., Mailstop 1020, Washington, DC 20250.
- Hand- or courier-delivered submittals: Benjamin Chan, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue SW., Mailstop 1020, Washington, DC 20250.

Instructions: All items submitted by mail or electronic mail must include the Agency name. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Benjamin Chan, Import Programs and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Mail Stop 1021, Washington, DC 20250, 202–720–8877. Email address: *iperd@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Agriculture Wool Apparel Manufacturers Trust Fund.

OMB Control Number: 0551-New.

Expiration Date of Approval: Three years from approval date.

Type of Request: New information collection.

Abstract: This information collection is required for affidavits submitted to FAS for claims against the Agriculture Wool Apparel Manufacturers Trust Fund. Claimants of the Agriculture Wool Apparel Manufacturers Trust Fund will be required to submit electronically a notarized affidavit and information pertaining to the production of worsted wool suits, suit-type jackets, or trousers for boys and men; or the weaving of wool yarn, wool fiber, or wool top to request a distribution from the Agriculture Wool Apparel Manufacturers Trust Fund electronically to FAS and will be available on the FAS Web site under the Agriculture Wool Apparel Manufacturers Trust Fund section.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hour per response for affidavits related to the Agriculture Wool Apparel Manufacturers Trust Fund.

Type of Respondents: Under the Agriculture Wool Apparel Manufacturers Trust Fund there are three groups of potential respondents, as authorized by Section 12315 of Act (Pub. L. 113–79): (1) Persons in the United States that produce worsted wool suits, suit-type jackets, or trousers for men and boys in the year prior to the application using worsted wool fabric of the kind described in headings 9902.51.11, 9902.51.15, or who weave worsted wool fabrics suitable for use in making men and boys suits under heading 9902.51.16 of the Harmonized Tariff Schedule of the United States; (2) Persons in the United States that process wool yarn, wool fiber, or wool top of the kind described in headings 9902.51.13 or 9902.51.14 of the Harmonized Tariff Schedule of the United States in the year prior to the application; (3) Persons in the United States who weave worsted wool fabrics of the kind described in headings 9902.51.11 and or 9902.51.15 of the Harmonized Tariff Schedule of the United States in the year prior to the application and must have also woven worsted wool fabrics in the United States of the kind described above in the years 1999, 2000, and 2001.

Estimated Number of Respondents: 55.

Estimated Number of Responses: 55.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 164 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1578 or email at *Connie.Ehrhart@fas.usda.gov.*

Request for Comments: We are requesting comments on all aspects of this information collection to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of FAS's functions, including whether the information will have practical utility; (2) Evaluate the accuracy of FAS's estimate of burden 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. Comments may be sent to Benjamin Chan, Import Programs and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Mail Stop 1021, Washington, DC 20250. Electronic mail submissions should be addressed to: *iperd@fas.usda.gov.*

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Persons with disabilities who require an alternative means for communication of information (*e.g.,* Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC, on December 9, 2014.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–30183 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Assessment Report of Ecological, Social, and Economic Sustainability, Conditions, and Trends for the Rio Grande National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of initiating the assessment phase of the Rio Grande National Forest land management plan revision.

SUMMARY: The Rio Grande National Forest, located in south central Colorado, is initiating the forest planning process pursuant to the 2012 Forest Planning Rule (36 CFR 219). This process results in a Forest Land Management Plan which describes the strategic direction for management of forest resources for the next fifteen to twenty years on the Rio Grande National Forest. The first phase of the process, the assessment phase, has begun and interested parties will be invited to contribute to the development of the assessment (36 CFR 219.6). The Forest hosted a series of informational meetings with key stakeholders and the public in the fall of 2014, and will be hosting additional meetings between January and June 2015. Additional information on public participation opportunities will be available on the project Web site: *http://www.fs.usda.gov/riogrande*. The trends and conditions identified in the assessment will help in identifying the need for change, in the development of plan components.

DATES: A draft of the assessment report for the Rio Grande National Forest is expected to be completed by fall of 2015 and will be posted on the Rio Grande National Forest Web site at *http://www.fs.usda.gov/riogrande*. From January 2015 through June 2015, the public is invited to engage in a collaborative process to identify relevant information and local knowledge to be considered for the assessment. The Forest will then initiate procedures pursuant to the National Environmental Policy Act (NEPA) and prepare a forest plan revision. The Forest will again be inviting the public to help identify the appropriate plan components that will become the NEPA proposed action and/or alternatives for the land management plan revision. The NEPA procedures result in a record of decision and the plan revision process results in a draft revised plan. The **Federal Register** availability announcement for these documents starts the pre-decisional administrative review process (36 CFR

219 Subpart B). The administrative review process provides an individual or entity an opportunity for an independent Forest Service review and resolution of issues before the final approval of a plan, plan amendment or plan revision.

ADDRESSES: Written comments or questions concerning this notice should be addressed to Rio Grande National Forest, Attn.: Plan Revision, 1803 W. Hwy 160, Monte Vista, CO 81144, or by email to: *comments-rocky-mountain-rio-grande@fs.fed.us* (subject heading titled *Forest Plan Revision*).

FOR FURTHER INFORMATION CONTACT: Amy Waring, Forest Planner, (719) 852–6215. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 5 a.m. and 5 p.m., Pacific Time, Monday through Friday. More information on the planning process can also be found on the Rio Grande National Forest Web site at *http://www.fs.usda.gov/riogrande*.

SUPPLEMENTARY INFORMATION: The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan. On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which provides broad programmatic direction to National Forests and National Grasslands for developing and implementing their land management plans. Forest plans describe the strategic direction for management of forest resources for fifteen to twenty years, and are adaptive and amendable as conditions change over time.

Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first stage of the planning process. The second stage is a development and decision process guided, in part, by the NEPA and includes the preparation of a draft environmental impact statement and revised Forest Plan for public review and comment, and the preparation of the final environmental impact statement and revised Forest Plan. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans.

With this notice, the agency invites other governments, non-governmental parties, and the public to contribute to the development of the assessment report. The assessment will rapidly evaluate the sustainability of existing ecological, economic, and social conditions and trends within the context of the broader landscape. It will help inform the planning process through the use of Best Available Scientific Information, while also taking into account other forms of knowledge, such as local information, national perspectives, and native knowledge. Lastly, the assessment will help identify the need to change the existing 1996 plan.

Collaboration as part of the assessment phase supports the development of relationships of key stakeholders throughout the plan revision process, and is an essential step to understanding current conditions, available data, and feedback needed to support a strategic, efficient planning process. As public meetings, other opportunities for public engagement, and public review and comment opportunities are identified to assist with the development of the forest plan revision, public announcements will be made, notifications will be posted on the Forest's Web site at *http://www.fs.usda.gov/riogrande,* and information will be sent out to the Forest's mailing list. If anyone is interested in being on the Forest's mailing list to receive these notifications, please contact Amy Waring, Forest Planner, at the mailing address identified above, by sending an email to: *comments-rocky-mountain-rio-grande@fs.fed.us* (subject heading titled *Forest Plan Revision*).

Responsible Official: The responsible official for the revision of the land management plan for the Rio Grande National Forest is Dan Dallas, Forest Supervisor, Rio Grande National Forest, 1803 W. Hwy 160, Monte Vista, CO 81144.

Dated: December 17, 2014.

Dan S. Dallas,

Forest Supervisor, Rio Grande National Forest.

[FR Doc. 2014–30189 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

King Fire Restoration Project, Eldorado National Forest, Placer and El Dorado Counties, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Eldorado National Forest proposes to restore portions of the King Fire of 2014. The proposed action includes hazard tree removal, fuel reduction, salvage logging, reforestation, road improvements, watershed improvements, and research.

DATES: Comments concerning the scope of the analysis must be received by January 23, 2015. The draft environmental impact statement is expected March 2015 and the final environmental impact statement is expected June 2015.

ADDRESSES: Send written comments to 100 Forni Road, Placerville, CA 95667, Attention: King Fire Restoration Project. Comments may also be sent via email to *comments-pacificsouthwest-eldorado@fs.fed.us,* or via facsimile to 530–621–5297.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrell, Team Leader, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667, phone 530–642–5146 or email to *pferrell@fs.fed.us.* A scoping package, maps and other information are online at: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=45952.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

General Background

The King Fire started September 13, 2104 and burned approximately 97,000 acres on the Eldorado National Forest and on private timberlands. The project area for this analysis is the approximately 63,000 acre portion of the King Fire on Eldorado National Forest lands within the Georgetown, Pacific, and Placerville Ranger Districts administrative boundary. The project area includes all or portions of 30 watersheds. The large high severity portions of this fire resulted in adverse effects to forest resources such as soil, riparian areas, and wildlife habitat, and killed thousands of trees that contribute to hazardous conditions for people and extremely high fuel loading over time.

Purpose and Need for Action

The underlying need(s) for this proposal include: Reduce the risk from falling dead, dying, and defective trees to the safety of forest visitors and workers, and of damaging private property, structures, and cultural resources; reduce accumulation of fuel over the long term in strategic fire management areas for the purpose of improving the ability to manage and control future fires; maintain the ecological integrity of post fire habitat while restoring diverse conifer forests and laying the foundation for resiliency into the future; expeditiously recover timber killed by the fire commensurate with available markets, for the purpose of generating funds to offset the cost of restoration activities and contribute to societal needs for wood products; take advantage of research opportunities to increase knowledge regarding the effects of large fires on the environment, how to reduce the risk of future fires, and how to restore resilient forests after fires; reduce existing and potential sources of soil movement and sedimentation to streams, and reduce large woody fuel accumulation in sensitive areas where a future fire is likely to have detrimental effects on soil, water, and cultural resources.

Proposed Action

In developing the proposed action, consideration was given to areas that burned with high severity outside the natural range of variation; exclusion of hardwood/shrub/grassland areas that would continue to persist without treatment; maximizing the probability of California spotted owl persistence within and adjacent to the King Fire, maintaining habitat suitable for fire obligate wildlife including the black-backed woodpecker, promoting a mosaic of post-fire vegetation important for species associated with early seral habitats, and minimizing impacts to the threatened Sierra Nevada yellow-legged frog and California red-legged frog; conifer seed dispersal and the need to plant trees in areas unlikely to naturally regenerate; identification of wildland urban interface defense zones where the focus is on protecting life and property; strategic fuel management zones to contain wildfire and facilitate prescribed fire; and generally eliminate steep slopes from the proposed action where treatments would be prohibitively expensive, and where treatment was not needed to meet other objectives of the project.

Areas identified for treatment are: approximately 1,200 acres in the wildland urban interface (WUI) defense zone where increasing fuel loads pose a hazard to community fire protection; approximately 7,300 acres within the fire management zone which are strategic areas identified to establish a safe and effective place for future fire suppression; approximately 5,600 acres in the forest resiliency area where reestablishment of conifer forests are desired, ecologically sustainable, and can be managed to have a high probability of surviving subsequent wildfire; other specific areas where treatment would occur for research and watershed improvement; and roads needing hazard tree removal (approximately 429 miles), repair, closure, and/or decommissioning.

Within Strategic Fuels Management Zones, WUI Defense Zones, and Forest Resiliency Areas, remove dead conifer trees using in excess of soil cover needs and wildlife snag retention levels needs. In the Forest Resiliency Areas, snags will generally be retained in two to five acre patches covering 15 to 20 percent of a treatment area and incorporating the largest snags available. No standing snags will be retained in WUI Defense Zones, and four large snags per acre up to 12sq. ft./acre basal area in a grouped configuration will be retained in Strategic Fire Management Zones. Trees to be removed have brown foliage or no foliage remaining as viewed from the ground. Mortality monitoring for tree removal may be conducted up to 4 years following the fire.

Within Hazard Areas, remove hazard trees along Forest Service system roads open to the public and roads needed for access to treatment areas, along private residential property, adjacent to structures, and in specific cultural resource sites identified by the archeologist. Hazard trees to be removed are dead and dying trees that have potential to reach the road or property and live trees that are sufficiently damaged or defective to pose a risk of falling within the next 5 years.

Methods include mechanical or other ground based logging on approximately 11,800 acres, skyline or helicopter logging on approximately 700 acres, hand treatments on approximately 700 acres, and mastication or machine piling on approximately 100 acres.

In areas identified above, the maximum desired surface fuel loading is 6–10 tons per acre of material <3″ diameter. In areas described above where additional treatment is needed to reduce fuel loading to the desired level or provide additional soil cover, tops, limbs, and unmerchantable boles of harvested trees, and small dead trees that are not removed using the logging methods described, would be treated by one or more of the following methods: cutting and scattering to within 18 inches of the ground, cutting and left in place, hand piling, mastication or chipping with a track mounted masticator or chipper; and/or cutting trees and piling using tractors or rubber tired machinery with brush rakes or grapples. Piles would be burned.

Within portions of watersheds determined to be at high risk of soil erosion and sedimentation which could negatively impact watershed resources, treatments include: Increasing groundcover using onsite or imported material (*e.g.* mastication, lop and scatter, mulching), obliteration of existing disturbances, and removal of excess woody material.

Planting of seedlings would occur on approximately 14,000 acres of conifer forest types where a forested community is the desired condition, but where natural regeneration of a desired species composition and density are not expected to occur within the next several decades, and where stands can reasonably be effectively and efficiently managed into the future. Planting strategies would be designed to maintain ecological integrity while balancing future climate projections, economics, long-term management feasibility, and desired conditions. Except in the limited circumstances where site preparation to treat residual fuels is not needed, salvage logging would be completed before planting takes place. At the time of planting, the planted seedlings would be released from competing vegetation by hand scraping a radius of 2 to 5 feet around the seedlings depending on competing vegetation and follow-up treatment planned. Follow-up manual and herbicide release of seedlings from competing vegetation would occur where competing vegetation is expected to reduce seedling survival or growth below an acceptable level. Proposed research projects are to study the effect of varying salvage and re-planting intensities on the fuel complex and native/non-native species abundance over time; study forest resilience after high-severity wildfire: the effect of snag density and distribution on the retention of forest ecosystem functions; and additional projects to be determined.

Responsible Official

Forest Supervisor, Eldorado National Forest.

Nature of Decision To Be Made

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to restore the King Fire area.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A scoping open house will be held January 13, 2015 in Placerville, CA. Comments specific to the location, methods, and actions proposed are the most helpful.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 18, 2014.

Laurence Crabtree,

Forest Supervisor.

[FR Doc. 2014–30158 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region, Payette National Forest, Council Ranger District, Idaho, Middle Fork Weiser River Landscape Restoration Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Council Ranger District of the Payette National Forest will prepare an Environmental Impact Statement (EIS) for the Middle Fork Weiser River Landscape Restoration Project. The Middle Fork Weiser River Landscape Restoration Project area is located approximately six miles southeast of Council, Idaho, primarily in the Middle Fork Weiser River watershed. It comprises approximately 50,000 acres and is within the boundaries of the Council Ranger District of the Payette National Forest, in Adams County Idaho. The project is designed to move vegetation toward desired conditions, improve wildlife habitat, reduce forest fuels, improve watershed conditions through a variety of activities including commercial and non-commercial vegetation management and road system modifications and maintenance; improve recreation infrastructure and opportunities; and improve firefighter and public safety by establishing fuelbreaks.

DATES: Comments concerning the scope of the analysis must be received by January 23, 2015. The draft environmental impact statement is expected August, 2015 and the final environmental impact statement is expected February 2016.

ADDRESSES: Send written comments to Keith Lannom, Forest Supervisor, 500 N. Mission Street, Building 2, McCall, Idaho 83638. Comments may also be sent via email to *comments-intermtn-payette@fs.fed.us,* or via facsimile to 208–634–0744.

FOR FURTHER INFORMATION CONTACT: Stephen Penny, Project Team Leader, 208–253–0164, *spenny@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose is to: (1) Move vegetation toward the desired conditions (*e.g.,* canopy closure in large tree class, species composition, and size class distribution) defined in the Forest Plan and consistent with the current science for restoration of ponderosa pine, Douglas-fir, grand fir, subalpine fir and lodgepole habitat types, with an emphasis on: (a) Improving habitat for specific wildlife species of concern, such as the species dependent on dry coniferous forests, while maintaining habitat for federally-listed and sensitive species; (b) Maintaining and promoting large tree forest structure, early seral species composition (for example aspen, western larch, ponderosa pine, and Douglas-fir) and forest resiliency to fire, insects and disease and climate change; (c) Reducing the risk of uncharacteristic wildland fire, with an emphasis on restoring and maintaining desirable plant community attributes including fuel levels, fire regimes, and other ecological processes; and (d) Maintaining and promoting large trees where retention is consistent with the above objectives. (2) Maintaining and promoting legacy ponderosa pine and western larch and legacy-like Douglas fir; (3) Restore heterogeneous fine and landscape scale mosaic patterns by establishing varying patch sizes consistent with spatial patterns that promote forest resilience to disturbance; (4) Within dry non-forested habitats, maintain and promote native grasses and restore desired conditions for age and canopy class structure on sagebrush and bitterbrush; (5) Decrease the conifer encroachment into aspen and non-forested habitats; (6) In order of priority, move the Granite Creek subwatershed from a Watershed Condition Framework (WCF) rating of Class 3 (Impaired) to a Class 2 (Functioning at Risk), and move Mica Creek, Jungle Creek, and Little Fall Creek subwatersheds within the Project area toward the desired condition for soil, water, riparian, and aquatic resources; (7) Manage recreation use in the Project with an emphasis on hardening primary dispersed recreation areas, improving existing trails and providing new trail opportunities including an OHV loop and a non-motorized trail; (8) Contribute to the economic vitality of the communities adjacent to the Payette National Forest; and (9) Improve firefighter and public safety by establishing strategically placed defensible fuelbreaks within the Project area.

The need for the Project is based on the difference between the existing and desired conditions. These differences include: (1) Loss of habitat for Family 1 wildlife species, such as the white-headed woodpecker, compared to historical conditions; (2) Fewer large tree size classes than desired in the drier forest types (Potential Vegetation Groups 2, and 5), and higher canopy cover; (3) Fewer early seral tree species (*i.e.* aspen, ponderosa pine and western larch) than desired; (4) Increased stand and landscape homogeneity of size classes, species diversity, tree distributions and canopy closure; (5) Increased high canopy closer in the large size classes in some vegetation types; (6) Increased conifer encroachment into aspen and non-forested habitats; (7) Fewer fire resistant tree species (*i.e.,* ponderosa pine and Western larch) and higher densities of non-fire resistant tree species; (8) Higher surface fuel loading in those areas that have missed one or more fire return intervals; (9) Less than desired watershed function and integrity, including increased sedimentation, hydrologic risk from flooding, disturbance in RCAs (mainly road-related), habitat fragmentation, lack of large woody debris in some streams, and lack of coarse woody debris in areas of past timber harvest; and (10) Trail and recreation facilities that do not meet current design and accessibility standards.

Proposed Action

The Proposed Action includes: Up to 13,002 acres of commercial harvests (a combination of Free Thin, Free Thin–Patch Cut-Selection Harvest, Aspen Restoration, and Mature Plantation Harvest). Combined commercial and non-commercial vegetation treatments include up to 5,280 acres of Meadow Restoration and 1,267 acres of Restoration of Low Density Timber Stands. Non-commercial treatments include thinning up to 4,309 acres. These acreages include treatments designed for and within Riparian Conservation Areas (RCAs) and total approximately 3,428 acres. Prescribed burning would be conducted on up to 37,000 acres and approximately 13 miles of shaded fuelbreak would be created.

Currently closed roads used for timber harvest would be evaluated for firewood retrieval, and could include firewood decks made available for public use.

Watershed improvements proposed would improve watershed function and resiliency through minimizing the impact of the road and trail network throughout Middle Fork Weiser River watershed, and restoring vegetation and soil productivity in riparian areas. Treatments include road and trail decommissioning, improvements and reroutes, improvement to dispersed recreation sites within the Middle Fork Weiser River RCA, and vegetation treatments designed to restore or enhance native riparian vegetation through mechanical or hand treatment, prescribed fire, and planting and seeding.

Forest Service System road treatments proposed throughout the project area include maintenance and/or improvement of Forest Service System Roads. This could include graveling, reshaping, upgrading and replacing culverts, and stabilizing cut and fill slopes. Approximately 16.6 miles of system road would be placed in long-term closure status. Long-term closure treatments include stabilizing the road surface and cut and fill slopes, removing or bypassing culverts, and blocking the entrance. Approximately 16.1 miles of system roads and 62.1 miles of unauthorized routes would be decommissioned. Decommissioning treatments proposed range from full recontour to spot treating isolated areas such as stream crossings on roads that have little to no defined prism and have recovered.

Culverts that restrict proper hydrologic function and passage of fish and other aquatic organisms would be replaced. These are: (1) FS System Road 50186 at the Middle Fork Weiser River near the junction with FS System Road 50245 and (2) FS System Road 50186 at Big Creek.

Developed and dispersed recreation improvements include: 1) Cabin Creek Campground—Install and relocate one single vault toilet to replace the old existing one, add new site markers to individual campsites, install a new fee tube and information kiosk, install accessible tables, and build an accessible pathway to the water system, gravel the main campground loop road, and widen the road and turn at the campground access to accommodate full size recreational vehicles; (2) Make improvements to the Horse Cabin Flat dispersed site including installation of up to four hitch rails, designation of camping sites using boulders, graveling and site signs to mark the allowed camping locations, add a single vault toilet; (3) Harden the crossing of the Middle Fork Weiser River at the dispersed camping area for stock use and to minimize resource damage and focus motorized access to the existing bridge approximately 300 feet from this crossing. Make improvements to the site in general (hardening, providing physical barriers to direct use) in order to minimize impacts to the adjacent Middle Fork Weiser River; and 4) Roads identified for decommissioning would be evaluated for site-specific dispersed recreation opportunities, at the intersection with FS System open, or seasonally open roads, if no resource concerns are identified.

Trail improvements include: (1) Establish trailheads with parking and hitch rails for the #205 (northeast) and the #198 (southwest) trails. Both trailheads would require securing easements from Potlatch Corporation, the private landowner; (2) To accommodate continued two-wheel motorized access on the entire #198 trail, change the designation of a short section (two miles) of the trail from non-motorized to two-wheel motorized use; (3) Perform trail maintenance (including proper signing) on 24 miles of existing open designed trail within the Project area; (4) Construct and formally designate for seasonal use, a motorized OHV loop Trail (Trail open to vehicles 70 inches and less in width) using closed road 50166 and closed road 50485, to provide a motorized trail approximately three miles in length. This would require ½ mile of new trail construction to complete and close the loop; (5) Sign and formally designate the former #202 trail as open for non-motorized use. Complete needed switchback construction to mediate the steep sections; (6) Relocate the trailhead for the #209 ATV trail onto National Forest Lands. Change the designation of the trail from ''open year round'' to ''seasonal''; (7) Re-route portions of the #198 trail near the base of Council Mountain to reduce resource impacts and improve sustainability. Reduce congestion of multiple trail junctions in this sensitive upper elevation trail network; and (8) Close and rehabilitate approximately four miles of unauthorized OHV trails throughout the project area.

Proposed actions in the Council Mountain and Poison Creek Inventoried Roadless Areas include (1) Prescribed burning and preparation for prescribed burning including associated handline and (2) Trail improvement and designation changes. There is no treatment proposed in the Council Mountain Research Natural Area.

Responsible Official

The Forest Supervisor of the Payette National Forest is the Responsible Official.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, the Responsible Official will determine whether to proceed with the action, as proposed, as modified by another alternative or not at all. If an action alternative is selected, the Responsible Official will determine what design features, mitigation measures and monitoring requirements.

Preliminary Issues

Preliminary issues for this project include effects related to the proposed activities on water quality, soil productivity, wildlife habitat, recreation, and access management.

Addresses

Additional project information is available on the Payette National Forest Web site at *http://www.fs.usda.gov/projects/payette/landmanagement/projects.*

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 17, 2014.

Keith Lannom,

Forest Supervisor, Payette National Forest.

[FR Doc. 2014–30193 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Big Bar Ranger District; California; Burnt Ranch Fire Resilient Community Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Shasta-Trinity National Forest (STNF) will prepare an environmental impact statement (EIS) to document and publicly disclose the environmental effects of implementing a hazardous fuels reduction project on approximately 5,327 acres of National Forest System lands. Activities are proposed within the wildland urban interface or WUI (the zone where structures and other human developments meet, or intermingle with, undeveloped wild lands) of the community of Burnt Ranch, California as well as the Corral Late Successional Reserve (LSR). The proposed project would provide the Burnt Ranch community and the LSR with enhanced protection from catastrophic wildfire and increased fire fighter and public safety. The proposal includes thinning trees from below in overcrowded stands, plantations and along roadsides. Some thinning would be accomplished through commercial timber harvest of sawtimber and/or biomass as well as from prescribed burning. The Burnt Ranch Fire Resilient Community Project is located in sections 5, 4, 3, 2, 8, 9, 10, 11, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, and 35 in T. 5 N., R. 6 E.; sections 19 and 30 in T. 5 N., R. 7 E., sections 1, 2, 3, 11 and 12 in T. 4 N., R. 6 E. Humboldt Meridian.

DATES: Comments concerning the scope of the analysis must be received by January 26, 2015. The draft environmental impact statement is expected May 2015 and the final environmental impact statement is expected February 2016.

ADDRESSES: Send written comments to Weaverville Ranger Station, P.O. Box 1190 Weaverville CA 96093. Comments may also be sent via email to *comments-pacificsw-shasta-trinity-bigbar-weaverville@fs.fed.us,* or via facsimile to (530) 623–6010.

FOR FURTHER INFORMATION CONTACT: Stephanie Riess, Environmental Coordinator at, (530) 623–1755, or *stephaniesriess@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The overarching goals of the current planning effort is to move Burnt Ranch towards becoming a ''fire resilient'' community and to promote and maintain late successional conditions within the Corral Late Successional Reserve in the maximum amounts sustainable through time. For this project a ''fire resilient'' community is defined as ''communities that experience minimum disruption to life and economy after a hazard event has passed''. Community wildfire protection focuses on increasing fire resilience by managing vegetation proximate to homes and other community values at risk. Fire-safe planning can lead to decreased property, infrastructure, and habitat losses from fires within the Wildland Urban Interface (WUI) and can result in lower fire suppression costs.

The strategy focuses on implementing complementary fuel and fire hazard reduction actions on National Forest System (NFS) lands of the Shasta-Trinity National Forest (STNF) and on adjacent private lands. These actions are designed to implement the all lands approach articulated by Agriculture Secretary Tom Vilsack in a 2009 speech. ''The threats facing our Forests don't recognize property boundaries. So in developing a shared vision around forest, we must also be willing to look across property boundaries. In other words, we must operate at a landscape-scale by taking an all-lands approach''.

Currently, partners engaged in the planning effort on both private and Forest Service lands include the Natural Resource Conservation Service (NRCS), Trinity County Resource Conservation District (TCRCD), Willow Creek Fire Safe Council, Trinity County Fire Safe Council, Trinity County, Hawkins Bar Volunteer Fire Department, and local landowners.

The TCRCD and NRCS are currently engaged in planning fuels reduction treatments on private lands within the Burnt Ranch community that will contribute to the reduction of the likelihood of adverse wildfire impacts on the Burnt Ranch community and the Corral LSR.

The Burnt Ranch Fire Resilient Community Project actions are proposed entirely on NFS lands of the Shasta-Trinity National Forest. This decision will not authorize any treatment on lands not managed by the Forest Service.

The Burnt Ranch Fire Resilient Community project planning area is approximately 8,347 acres in size. It is located in Trinity County, California. Portions or all of the following Sections fall within the planning area: Humboldt Meridian, T. 4 N., R. 6 E., Section 1, 2, 3, 11, and 12. T. 5 N., R. 6 E., Section 5, 4, 3, 2, 8, 9, 10, 11, 14, 15, 16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, and 35. T. 5 N., R. 7 E., Section 19, and 30.

The project area is within the Trinity River Management Area (Management Area #15) of the Shasta-Trinity Land and Resource Management Plan (LRMP).

The project area is entirely within the WUI of the Burnt Ranch community as identified in the Trinity County Community Wildfire Protection Plan Update 2010 (CWPP). In addition, the majority of the planning area falls within the Corral LSR.

Management objectives within LSRs include protecting and enhancing conditions of late-successional forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl. There are approximately 5,912 acres of critical habitat for the threatened Northern spotted owl within the planning area.

Objectives for LSRs include reducing the risk of large-scale disturbance, including stand-replacing fire, insect and disease epidemic, and major human caused impacts. The Corral LSR has been identified as being in an area of elevated risk to large-scale disturbance due to changes in the characteristics and distribution of the mixed-conifer forests resulting from past fire suppression.

There are approximately 5,912 acres of critical habitat for the threatened Northern spotted owl within the planning area. In management within designated Critical Habitat, and based on the intent expressed by Forest Service Chief Tom Tidwell and US Fish and Wildlife Service Director Dan Ashe April 24, 2013, our intent is to not be so conservative that, to avoid risks, we forego actions necessary to conserve forest ecosystems necessary for the long-term conservation of the northern spotted owl. At the same time, our intent is also not to be so aggressive that we subject spotted owls and their habitat to treatments where the long-term benefits do not clearly outweigh the short-term risks. Balance will be the key to our success. In its rule on Critical Habitat USFWS expressed: ''The Service encourages land managers to consider the conservation of existing high-quality northern spotted owl habitat, the restoration of forest ecosystem health, and the ecological forestry management practices recommended in the Revised Recovery Plan that are compatible with both the goals of northern spotted owl recovery and Standards and Guidelines of the Northwest Forest Plan.''

The 2011 Revised Recovery Plan has the following Recovery Actions that apply to the project area:

Recovery Action 10: Conserve spotted owl sites and high value spotted owl habitat to provide additional demographic support to the spotted owl population.

Recovery Action 32: Maintain substantially all of the older and more structurally complex multi-layered conifer forests on Federal lands outside of MOCAs in the Olympic Peninsula, Western Washington Cascades, Western Oregon Cascades, Oregon Coast Range, Oregon and California Klamath, and California Coast Provinces, allowing for other threats, such as fire and insects, to be addressed by restoration management actions. These forests are characterized as having large diameter trees, high amounts of canopy cover, and decadence components such as broken topped live trees, mistletoe, cavities, large snags, and fallen trees.

The proposed treatment areas are derived from the WUI boundary, which is divided into four zones. These WUI zones are strategically employed by Trinity County in their CWPP as well as in the Shasta-Trinity National Forest Fire Management Plan (FMP). The WUI zones are situated by proximity to a residence or structure. Treatments within the zones are developed to move that WUI zone towards specific fire behavior goals. Zone one, the Improvement Zone, is the residence or structure itself and has a goal of being a fire resistant structure or improvement. Zone two, the Reduced Fuel Zone, is the 100 foot area surrounding a structure and has the fire behavior goal of flame lengths less than two feet with no crown fire potential. Zone three, the Defense Zone, is 0.25 miles around a structure and has the fire behavior goal of flame lengths less than four feet and limited crown fire potential. Zone four, the Threat Zone, is 1.5 miles around a structure and has fire behavior goals of flame lengths less than eight feet and bringing crown fire to the ground (to a surface fire). No treatments are proposed for Zone 1 or 2 (Improvement Zone and Reduced Fuel Zone respectively), as these zones are generally located on lands not administered by the Forest Service.

In general, a need for action is identified by comparing the existing conditions in an area to desired future conditions as defined by direction in the Land and Resource Management Plan and requirements of other applicable laws and public policies.

In summary, the existing condition is as follows:

- The existing fuel condition poses a substantial hazard (measured by potential fire behavior) to wildland urban interface areas, including public and firefighter safety during access and egress; and the ability of firefighters to safely and effectively suppress wildfire.
- The existing fuel condition poses a substantial hazard (measured by potential fire behavior) of a large-scale disturbance that could result in the loss of key late-successional structure within the Corral LSR.
- Current overstocked conditions within plantations limit the ability of the plantations to develop late successional characteristics.

Vegetation

In general, vegetation in the planning area is mixed conifer type dominated by Douglas-fir. Ponderosa pine, sugar pine, and incense cedar are also common. Several hardwoods, including Pacific madrone, canyon live oak, tanoak, California black oak, and Oregon white oak, comprise a large component of some stands. In these hardwood stands, younger Douglas-fir are shading out the hardwoods, simplifying stand structure.

Based on available information as summarized in the Forest Wide Late Successional Reserve Assessment (USDA, 1999), historically, vegetation was probably different in terms of structure and species composition. In general, forested stands tended to be more open than currently found. There was a lot of stand or patch size diversity, with most of the patches containing trees of the same age and size class. The relatively denser stands were most likely found on the lower one-half of the north facing slopes, in riparian areas, and areas of deep, productive soils. More open stands occurred on south facing and the upper one-half of north facing slopes.

Currently, some stands within the planning area contain from approximately 400 to over 2,000 trees per acre (TPA). Average canopy cover ranges from approximately 80 to 96 percent in stands outside of plantations. Given the vertical continuity of the understory, canopy base height (CBH) ranges from 3 to 26 feet. The majority of the stands outside of plantations measured an average CBH less than 13 feet.

Fuels Condition

Prior to European settlement, naturally occurring levels of dead woody material (snags and down logs) were likely lower than present day due to the frequency of fires. Fuel loadings within small fuel size classes were likely significantly less than they are today, with the greatest proportion of large down logs found in mesic areas, north slopes, and higher elevations.

The historic fire regime has changed from a short interval, low intensity regime to a moderate to high intensity fire regime with infrequent intervals. Historically fires occurred at a 3 to 7 year interval, creating stands with open canopies and keeping woody debris levels low. It is reasonable to conclude that historically, fuel loadings would have, on average, ranged between 5–10 tons per acre.

Currently, dead and downed fuel levels within the planning area are variable; with fuel loadings ranging between 5–40 tons per acre. The lowest loadings are located in brush fields and mixed hardwood stands that are situated on dry, rocky south aspects. Fuel loadings within conifer stands, located on north aspects, tend to have the highest fuel loadings. Ladder fuels exist in a variety of settings within the planning area, with the highest concentration in canopy gaps adjacent to conifer stands, and within plantations.

Fire Hazard

Hazard describes potential fire behavior, which has implications for resource damage as well as suppression capability. Currently approximately 85% of the planning area is classified as having high to extreme fire hazard with the potential for flame lengths over 8 feet in length. Resistance to control is high under these conditions because flame lengths are too intense for firefighters to work near. It prevents firefighters from directly attacking a fire's edge and requires specialized equipment such as fire engines, air tankers, dozers, and helicopters.

Additionally, 85% of the planning area is classified as having the potential for passive or active crown fire. These conditions can allow for wildfire events that threaten resources and property, jeopardize public and firefighter safety, create hazardous air conditions and have very high suppression costs.

Plantations

Plantations within the planning area currently range in age from 20 to 56 years. Trees per acre currently range from approximately 140 to 720. Early seral plantations (approximately 20 years old) are highly diverse in shrub and herbaceous species, with the dominant conifer trees measuring 5 to 8 inches diameter at breast height (DBH). Some of the oldest plantations have trees that are over 10 inches DBH. In these older plantations, the competition between trees is greater and the mortality rate is increasing as some trees are being shaded out. Brush species are also being shaded out, and these plantations tend to be very dense with contiguous vertical fuels from the soil surface to the crown. In some cases, plantations were planted heavily with ponderosa pine. While this species does occur in the project area, Douglas-fir is better suited to many habitats and the pine is being out-competed by the Douglas-fir.

Plantations are particularly susceptible to active crown fire due to their low canopy base heights and interlocking crowns. Plantations are typically intermixed with brush and grass ingrowth and these light flashy fuels burn quickly with high intensities, which can cause rapid rates of spread. Wildfire moving through a plantation located adjacent to a natural stand with larger trees can provide a path for fire to easily get into the upper canopy. Because of this, and the proximity of plantations to the Burnt Ranch community, fire behavior goals for all plantations with the WUI are designed to reduce the fire behavior to flame lengths less than four feet with limited crown fire potential. Additionally, mitigating the fire effects in a plantation, if a fire should burn in the project area, will improve the likelihood that these young forests will continue the development to become mature forests. If a stand replacing fire occurs, then forest development is restarted.

Overgrown plantations provide no habitat or only poor to marginal habitat for the majority of Forest Service Sensitive or Federally-listed species within the project area. Wildlife species that may occur in these plantations tend to be habitat generalists, such as deer and rodents. However, the positioning and occurrence of plantations relative to older stands can offer a mosaic of habitat types that is beneficial to many species including those dependent on late-successional habitat for nesting. A mosaic of habitat types can be of particular importance to species such as Pacific fisher and spotted owl whose prey will utilize these younger stands for foraging and nesting. Thinned plantations can also provide foraging habitat for a wide variety of bird species, such as owls, raptors and passerines. There is a need to improve the health and vigor of existing plantations so that they can be retained on the landscape and allowed to develop into late-successional habitat.

The plantations in the Burnt Ranch Project area are not developing the structure and complexity that is desirable for wildlife species dependent on late-successional forests. Reforestation strategy has evolved as the management of the forest has evolved. Trees were planted densely with an assumption that these planted areas would be actively managed until they were ready to harvest again. This strategy has generated the need for treatments designed to support the growth and development of late-successional forest structure.

Desired Future Conditions

Desired future conditions for the planning area are described in the LRMP, as well as in the Burnt Ranch and Soldier Creek Watershed Analysis (WA), the Trinity County CWPP update, and the Forest Wide Late Successional Reserve Assessment (LSRA). In summary, these desired future conditions are as follows:

- *Forest Goal:* Achieve a balance of fire suppression capability and fuels management investments that are cost effective and able to meet ecosystem objectives and protection responsibilities (LRMP, page 4–4).
- *Forest Standard and Guidelines:* Activity fuels that remain after meeting wildlife, riparian, soil, and other environmental needs will be considered surplus and a potential fire hazard. The amount and method of disposal will be determined in the ecosystem analysis (LRMP, page 4–17). Consider fuelbreak construction investments when they complement Forest health/biomass reduction needs, very high and extensive resource values are at risk and to protect Forest communities. Design fire prevention efforts to minimize human-caused wildfires commensurate with the resource values-at-risk. Natural fuels will be treated in the following order of priority: (1) Public safety; (2) high investment situations; (3) known high fire occurrence areas; (4) coordinated resource benefits *i.e.* ecosystem maintenance for natural fire regimes (LRMP, page 4–18).
- *Management Area Direction:* Late-successional reserve stands are managed to maintain health and diversity components through the use of prescribed fire and thinning from below (LRMP, page 4–142).
- *Burnt Ranch and Soldier Creek Watershed Analysis:* Develop fuel breaks, thin wild stands and plantations, and create roadside buffers to reduce fuel loading and enhance fire protection capability (WA page, 61).
- *Trinity County CWPP update:* Consider proactive thinning and fuels reduction of plantations during their period of greatest vulnerability to fire (CWPP update, page 79). Implementing a system of strategic fuel breaks along ridges and roadsides is suggested as an extremely productive and agreed upon strategy for creating a more fire-safe community (CWPP update, page 80).
- *Forest Wide Late Successional Reserve Assessment:* Large stand replacing, high intensity fires are not desirable within LSRs. Throughout the LSRs, fuel conditions should generally range from low to moderate fire behavior (LSRA, page 163).

The goals of the current planning effort are to move Burnt Ranch towards becoming a ''fire resilient'' community and to promote and maintain late successional conditions within the Corral LSR in the maximum amounts sustainable through time. This proposal would change the current potential fire behavior within the Burnt Ranch WUI to fire behavior similar to the goals given for each WUI zone. In addition, the following needs will help reduce the risk of fire spreading from NFS lands to private lands while also reducing the risk of fire spreading from private lands to NFS lands.

1. There is a need to reduce the potential fire behavior in the WUI Defense Zone to low intensity (measured by flame lengths averaging 4 feet or less and with limited crown fire potential) during 90th percentile weather conditions.
2. There is a need to reduce the potential fire behavior in the WUI Threat Zone to moderate intensity (measured by flame lengths averaging 8 feet or less and bringing crown fire to the ground) during 90th percentile weather conditions.
3. There is a need to reduce the potential fire behavior along roadsides within the planning area to establish an environment where fire fighters can safely and effectively suppress wildfires, and allow for safer access and egress routes for the public.
4. There is a need to reduce the potential for high to extreme fire behavior within the Corral LSR to low to moderate fire behavior (measured by flame lengths and crown fire potential) during 90th percentile weather conditions.

Proposed Action

The proposed action was developed based on the purpose and need using fire modeling, research, professional and local knowledge, and vegetation and fuel loading data collected for the project area. A total of 5,327 acres are proposed for one or more treatment types. As part of the proposed action, resource protection measures will be included that assure consistency with environmental laws such as the

Endangered Species Act, the Clean Air Act, the Clean Water Act, the National Historic Preservation Act and the National Forest Management Act.

Authorization for Road Use

As part of the proposed action, the Forest will authorize the temporary administrative use of Forest System roads 5N15, 5N10, 5N09B, 5N27B and 5N60B. These roads are currently classified as Maintenance Level 1, closed to vehicular traffic, considered intermittent service roads, until needed for future management activities. These roads would be opened (existing berms would be removed and routine maintenance such as brushing or grading of the road could take place to make them safe for use) as needed to access treatment units. All level 1 roads utilized for project implementation would be closed (berms rebuilt, etc.) after initial thinning treatments are completed.

Roads 5N30, 5N60BA and 5N27C are private roads under Special Use Authorizations. The STNF will seek input from the permittees on dual use of these roads under FSM 7700 and FSM 2700.

Defense Zone Treatments

Defense Zone Units

Approximately 1,514 acres located within the WUI Defense Zone are proposed for treatment. Of those, approximately 420 acres will have understory treatments only with no material proposed for removal. The remaining Defense Zone Units (approximately 1,094 acres) are proposed to have understory treatments as well as thin-from-below treatments which would involve mechanical removal (sawlog and/or biomass utilization). Treatments would be applied where trees per acre (TPA), canopy base height or fuel loading do not meet desired conditions. Treatments will reduce the TPA, especially in the smaller size classes and increase the canopy base height (CBH), leaving smaller trees singly and/or in a clumped distribution spaced from the largest trees. In general, trees to be removed consist of understory trees (*i.e.* suppressed and intermediate) that act as ladder fuels, and some co-dominant trees that currently create a uniformly dense canopy. Treatments are designed to reduce the fire behavior in the Defense Zone Units to flame lengths of less than four feet with limited crown fire potential. These lower flame lengths will help reduce the risk of fire spreading from NFS lands to private lands while also reducing the risk of fire spreading from private lands to NFS lands.

Defense Zone and Threat Zone Treatments

Plantations

There are approximately 942 acres of plantations within the planning area that were planted between 1958 and 1993. Treatments in plantations will focus on increasing the spacing between trees, thinning around hardwoods and multiple sprouting hardwoods, and, in general, breaking up the continuity of surface, ladder, and crown fuels. Treatments would be applied where trees per acre (TPA), canopy base height or fuel loading do not meet desired conditions All plantation acres are proposed for utilization of forest products (sawlog and/or biomass utilization) where feasible. The slope of the area, the ability to operate ground-based equipment, and hydrological features can all impact the feasibility of utilization of forest products.

In plantations with a high percentage of ponderosa pine, thinning will remove many of the trees that have been out-competed by the natural regeneration (Douglas-fir and incense cedar), creating an open stand. These treatments will accelerate the development of late successional characteristics by creating a forest that is complex vertically and horizontally. When there are a variety of tree ages, tree species, and spacing distances between individual trees (including openings and dense pockets) the forest can support a diversity of wildlife species that may not all have the same requirements. Treatments are designed to reduce the fire behavior in the plantations to flame lengths less than four feet with limited crown fire potential.

Roadside Fuel Breaks

Approximately 1,975 acres are proposed for roadside fuel breaks in the planning area. These treatments extend 600 feet from either side of identified roads. Fuel breaks are further delineated into three different profiles. Profile one extends from the road edge out 100 feet, profile two from 100 to 300 feet, and profile three from 300 to 600 feet. Treatment prescriptions will be most intense closer to the road, and reduce in intensity the farther away from the road with the objectives of establishing an environment where fire fighters can suppress fire safely and effectively. Treatments would be applied where trees per acre (TPA), canopy base height or fuel loading do not meet desired conditions. Roadside fuel breaks will allow for safer access and egress routes for the public, while also reducing the risk that fires started near roads will spread to the rest of the forest.

Profiles one and two (approximately 1,140 acres) are proposed for understory treatments as well as thin-from-below treatments which could involve mechanical removal (sawlog and/or biomass utilization). Understory treatments with no removal are proposed for profile three (approximately 836 acres). Treatments will reduce the TPA (especially in the smaller size classes) and increase the canopy base height. The treatment will also leave smaller trees singly and in a clumped distribution spaced from the largest trees in the fuel break.

Activities Common to Defense Zone Units, Plantations, and Roadside Fuel Breaks

These actions may occur at the same time or at a later date as the primary actions, and may occur where there is no removal proposed. These activities would only occur within defense zone units, treated plantations, and roadside fuel breaks. Treatments would reduce and/or rearrange activity and surface fuels in excess of desired conditions.

Treatments would be applied where trees per acre (TPA), canopy base height or fuel loading do not meet desired conditions. Activities will promote long-term late successional conditions by creating heterogeneity and increased resilience to large high-severity fires.

- Pruning to raise CBH—approximately 4,431 acres. This treatment could occur within all Defense Zone Units, Plantations and Roadside Fuel Breaks.
- Activity fuels and natural surface fuels in excess of desired conditions that are not proposed for removal will be treated solely by or a combination of the following:
  - Lopped and scattered—approximately 672 acres. This treatment could occur intermittently within Defense Zone Units, Roadside Fuel Breaks, and Plantations depending on fuel loading conditions after initial treatments and slope steepness.
  - Masticated or chipped (on slopes <35%)—approximately 2,942 acres. This treatment could occur intermittently across Defense Zone Units, Roadside Fuel Breaks, and Plantations depending on slope steepness, accessibility and fuel loading.
  - Machine piled and burned (slopes <35%)—approximately 150 acres. This treatment could occur intermittently across Defense Zone Units, Roadside Fuel Breaks, and Plantations where mechanical removal (sawlog and/or biomass utilization) is proposed.

○ Hand piled and burned—approximately 4,431 acres. This treatment could occur intermittently across Defense Zone Units, Roadside Fuel Breaks, and Plantations depending on slope steepness, proximity to homes and air quality concerns.

○ Jackpot burned—approximately 4,431 acres. This treatment could occur intermittently across Defense Zone Units, Roadside Fuel Breaks, and Plantations depending on slope, proximity to homes and air quality concerns.

○ Public Fuelwood Utilization—approximately 2,520 acres. This treatment would leave material suitable for public fuel wood use onsite in areas that are accessible, or decked along the roadside where safe to do so. This treatment could occur intermittently across Defense Zone Units, Roadside Fuel Breaks, and Plantations.

○ Understory Maintenance Burning—Approximately 4,431 acres. This treatment could occur within approximately two to ten years after initial treatment, or as the surface fuel conditions require for maintaining the desired fire behavior. This treatment could occur within all Defense Zone Units, Plantations, and Roadside Fuel Breaks. Multiple burn entries may be needed to maintain desired vegetation and fuel loadings.

Prescribed Fire Understory Units

Approximately 896 acres are proposed for prescribed understory fire treatment. No thinning will occur in these units. Treatments are intended to move these areas toward historic fire regime and fuel loading conditions and to allow fire personnel to make use of roads, natural barriers, and topography (such as ridge tops and drainages) for control lines during prescribed burning activities in other units (see previous section). The Prescribed Fire Understory Units will help reduce the overall amount of control lines needed within the planning area, allowing for more cost effective and safer understory burning, and reducing the potential for resource damage. Multiple burn entries of primarily low to moderate intensity fire may be needed to maintain desired vegetation and fuel loadings. Natural boundaries would be used whenever possible; however, control line construction will still be needed in some areas. Desired outcomes are a mosaic-burn severity pattern primarily from low to moderate intensity surface fire across 70–80% of the treatment area. Treatments would be applied where trees per acre (TPA), canopy base height or fuel loading do not meet desired conditions. This treatment would create mosaic forest conditions that contribute to late successional characteristics while providing a more fire-resilient landscape.

Responsible Official

Forest Supervisor, Shasta-Trinity National Forest.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to implement the proposed action, take an alternative action that meets the purpose and need or take no action.

Scoping Process

The project is included in the Shasta-Trinity National Forest's quarterly schedule of proposed actions (SOPA). Detailed information on the proposed action, including maps, that will aid in the informing comments will be available on the Forest Web site at: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=38444.*

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 17, 2014.

David R. Myers,

Forest Supervisor.

[FR Doc. 2014–30182 Filed 12–23–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: The Ocean Enterprise: A study of U.S. business activity in ocean measurement, observation and forecasting.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a new information collection).

Number of Respondents: 300.

Average Hours per Response: 25 minutes.

Burden Hours: 125.

Needs and Uses: This request is for a new information collection supported by Section 12302(3) of the Integrated Coastal and Ocean Observation System Act (ICOOS Act) part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11). The survey is voluntary.

NOAA's National Ocean Service is requesting approval of a Web-based survey of employers who provide either services or infrastructure to the Integrated Ocean Observing System (IOOS) or organizations that add value to the IOOS data and other outputs by tailoring them for specific end uses. The purpose of the survey and overall project is to gather data to articulate the collective and derived value of the IOOS enterprise, and to create a profile of businesses and organizations who are involved with providing services or utilizing the data for other specific end uses. This is the first survey of its kind on a national scale. The project is funded by NOAA and is being conducted on its behalf by the contractor, ERISS Corporation. The project contract spans three years with the first portion of the contract mainly involved with researching and selecting appropriate businesses to include in the study database. The Web survey will be the main data collection piece of the project and is necessary in order to collect demographic, financial, and functional information for each organization with regards to their involvement with IOOS. The final deliverable of this project is an analytic report detailing the findings of the web survey and the analysis of the employer database.

The marine technology industry is an important partner and stakeholder within IOOS; however, without the baseline that this study will provide, IOOS is unable to articulate its collective and derived value. The results will demonstrate the size and economic impact of IOOS data to the United States marine ocean sector. That information can be used to understand the value of export sales and the identification of potential growth and/or new international markets which would further the Department of Commerce

(DOC) strategic goal for better *environment intelligence* and translate into better programs by the DOC International Trade Administration in ocean observing industries in international trade.

Affected Public: Business or other for-profit organizations, not-for-profit organizations.

Frequency: One time.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: December 19, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–30180 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/5/2014 through 12/18/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Altratek Plastics	105 Gay Street, Longmont, CO 80501.	12/18/2014	The firm manufactures plastic seals, pipes and tubes and housings produced for the automotive, water filtration, and transportation monitoring industries.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 18, 2014.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2014–30188 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–877, C–489–823]

Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor at (202) 482–4007 (Korea) or Elizabeth Eastwood (Turkey) at (202) 482–3874, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2014, the Department of Commerce (the Department) initiated the countervailing duty (CVD) investigations of welded line pipe from the Republic of Korea and the Republic of Turkey.[1] Currently, the preliminary determinations are due no later than January 9, 2015.

Postponement of Due Date for the Preliminary Determinations

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for a postponement, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

On December 11, 2014, the petitioners[2] in these investigations timely requested that the deadline for the preliminary determination in each of these cases be postponed in accordance with 19 CFR 351.205(e), citing the extraordinarily complicated nature of the cases. Therefore, in accordance with section 703(c)(1)(A) of

[1] *See Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 79 FR 67419 (November 13, 2014).

[2] The petitioners are American Cast Iron Pipe Company, EnergexTube (a division of JMC Steel Group), Maverick Tube Corporation, Northwest Pipe Company, Stupp Corporation (a division of Stupp Bros., Inc.), Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA (*see* December 11, 2014, letters on the record of these investigations).

the Act, we are fully postponing the due date for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. However, as that date falls on a Sunday (*i.e.,* March 15, 2015), the deadline for completion of the preliminary determinations is now March 16, 2015, the next business day.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: December 18, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–30208 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Termination of the Suspension Agreement on Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, Rescission of 2013–2014 Administrative Review, and Issuance of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is terminating the Agreement Suspending the Antidumping Investigation on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation (''Agreement''), rescinding the 2013–2014 administrative review of the agreement, and issuing an antidumping duty (''AD'') order on hot-rolled steel products from the Russian Federation. The Department is directing the suspension of liquidation to begin on December 19, 2014.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Judith Wey Rudman, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0162 or (202) 482–0192, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 1998, the Department initiated an AD investigation on imports of hot-rolled steel from the Russian Federation. *See Initiation of Antidumping Duty Investigations: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and the Russian Federation,* 63 FR 56607 (October 22, 1998). On November 25, 1998, the ITC published its preliminary determination that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of the subject merchandise from the Russian Federation. *See Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia,* 63 FR 65221 (November 25, 1998). On February 25, 1999, the Department published its preliminary determination that hot-rolled steel from the Russian Federation was being, or was likely to be, sold in the United States at less than fair value. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 9312, February 25, 1999.

On July 12, 1999, the Department and the Ministry of Trade (''MOT'') of the Russian Federation signed the Agreement, under section 734(l) of the Tariff Act of 1930, as amended (''the Act''), which suspended the AD investigation on hot-rolled steel from the Russian Federation. *See Suspension of Antidumping Duty Investigation: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 38642 (July 19, 1999). The basis for this action was an agreement between the Department and the MOT accounting for substantially all imports of hot-rolled steel from the Russian Federation, wherein the MOT agreed to restrict exports of hot-rolled steel from all Russian producers/exporters to the United States and to ensure that such exports were sold at or above the agreed reference prices. The MOT was the predecessor to the Economy Ministry, which is now the relevant agency representing the Government of the Russian Federation for purposes of this Agreement.

Upon the request of the petitioners in this proceeding, the investigation was continued and the Department made an affirmative final determination of sales at less than fair value.[1] *See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 64 FR 38626 (July 19, 1999) (*Final Determination*). In its *Final Determination,* the Department calculated weighted-average dumping margins of 73.59 percent for Joint Stock Company (''JSC'') Severstal, a respondent company in the investigation, and 184.56 percent as the Russia-wide rate. Likewise, the International Trade Commission (''ITC'') continued its investigation and made an affirmative determination of material injury to an industry in the United States. *See Certain Hot-Rolled Steel Products From Brazil and Russia,* 64 FR 46951 (August 27, 1999) (*Final ITC Determination*).

On August 26, 2011, at the request of Nucor Corporation, a domestic interested party, the Department initiated an administrative review of the Agreement for the period of review from July 1, 2010, through June 30, 2011. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). On November 30, 2012, the Department and the Economy Ministry signed a revision to the Agreement that updated the reference prices and revised the mechanism for calculating the reference prices. On December 6, 2012, the Department published its final results of administrative review and the November 30, 2012, revision to the Agreement. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation; 2010–2011; Final Results of Administrative Review and Revision of Agreement Suspending Antidumping Duty Investigation,* 77 FR 72820 (December 6, 2012).

On July 10, 2014, domestic interested parties Nucor Corporation, ArcelorMittal USA LLC, United States Steel Corporation, Gallatin Steel Company, Steel Dynamics, Inc. (SDI), and SSAB N.A.D., Inc., filed a submission alleging that the revised Agreement had failed to achieve its statutory purpose of preventing the suppression or undercutting of price levels of domestic producers by imports of hot-rolled steel from the Russian Federation and that the Department should terminate the agreement and impose antidumping duties on imports of hot-rolled steel from the Russian Federation. On August 29, 2014, at the request of Russian Hot-Rolled Steel producers JSC Severstal and Novolipetsk Steel (NLMK), the Department initiated an administrative review of the Agreement for the period of July 1, 2013, through June 30, 2014. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 79 FR 51548 (August 29, 2014) (''*2013–2014 Administrative Review*'').

On October 17, 2014, the Department issued a letter to the Economy Ministry

[1] The petitioners in the original investigation included the following: Bethlehem Steel Corp.; Ispat Inland Inc.; LTV Steel Company, Inc.; National Steel Corp.; U.S. Steel Group (a Unit of USX Corp.); California Steel Industries; Gallatin Steel Company; Geneva Steel; Gulf States Steel Inc.; Ipsco Steel Inc.; Steel Dynamics; Weirton Steel Corporation; and Independent Steelworkers Union.

stating that it had made a final decision to exercise its option under Section X.C of the Agreement to terminate the Agreement, effective in 60 days. On October 22, 2014, the Trade Representative of the Russian Federation in the USA requested by letter that the Department clarify the exact date of termination of the Agreement. On October 27, 2014, the Department clarified, by letter to the Trade Representative, that it considered the official date of notification to the Economy Ministry to be October 20, 2014 (*i.e.,* the date the Economy Ministry received the notification) and the effective date of termination of the Agreement to be December 19, 2014.

Scope of the Order

The merchandise subject to the AD order is certain hot-rolled flat-rolled carbon-quality steel products. The covered merchandise is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

See Appendix I for the full description of merchandise covered by the Order.

Termination of Suspended Investigation and Issuance of AD Order

As discussed above, on October 20, 2014, the Department notified the Economy Ministry of its decision to terminate the Agreement pursuant to Section X.C of the Agreement, which states (in part):

MOT or DOC may terminate this Agreement at any time upon written notice to the other party. Termination shall be effective 60 days after such notice is given. Upon termination of this Agreement, the provisions of U.S. antidumping law and regulations shall apply.

As noted above, the underlying investigation in this proceeding was continued pursuant to section 734(g) of the Act, following the acceptance of the Agreement. The Department made a final affirmative AD determination, and the ITC found material injury. *See Final Determination* and *ITC Final Injury Determination,* respectively. Therefore, in accordance with section 735(c) of the Act, the Department is issuing an AD order and instructing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of entries of subject merchandise, effective December 19, 2014, which is 60 days from the date the Department gave notice to the Economy Ministry of that it was terminating the Agreement, as described above.

Rescission of Administrative Review

Due to the termination of the Agreement, the Department is rescinding the 2013–2014 Administrative Review of the Agreement, effective December 19, 2014.

Antidumping Duty Order

In accordance with section 736(a)(1) of the Act, the Department is directing CBP to assess, beginning on December 19, 2014, an antidumping duty equal to the weighted-average AD margins listed below.

We are instructing CBP to require a cash deposit for each entry equal to the AD weighted-average margin rates found in the Department's *Final Determination,* as listed below. These suspension-of-liquidation instructions will remain in effect until further notice. The all others rate applies to all producers and exporters of subject merchandise not specifically listed. The final AD ad valorem rates are as follows:

Manufacturer/Exporter	Weighted-average margin (percent)
JSC Severstal	73.59
All Others	184.56

This notice constitutes the AD order with respect to hot-rolled steel from the Russian Federation pursuant to section 736(a) of the Act. This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: December 19, 2014.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

For the purposes of this antidumping duty order, ''hot-rolled steel'' means certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness.

Universal mill plate (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically subject to the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products subject to the scope of this order, regardless of HTSUS definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 Percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

—Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.,* ASTM specifications A543, A387, A514, A517, and A506).

—SAE/AISI grades of series 2300 and higher.

—Ball bearing steels, as defined in the HTSUS.

—Tool steels, as defined in the HTSUS.

—Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.

—ASTM specifications A710 and A736.

—USS Abrasion-resistant steels (USS AR 400, USS AR 500).

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max	0.10 Max	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

—Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

—Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

—Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

—Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inches nominal), mill edge and skin passed, with a minimum copper content of 0.20 percent.

The covered merchandise is classified in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered include: Vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, 7226.99.00.00 and 7226.99.0180. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the covered merchandise is dispositive.

[FR Doc. 2014–30234 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 14–00003]

Export Trade Certificate of Review

ACTION: Notice of Application for an Export Trade Certificate of Review for Wayne Jones dba Imani Resource Service Application No. 14–00003.

SUMMARY: The Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed application and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request For Public Comments: Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 14–00003.''

A summary of the current application follows.

Summary of the Application

Applicant: Wayne Jones dba Imani Resource Service, 115 Plaza Dr. #605, Kerrville, TX 78028

Application No.: 14–00003

Date Deemed Submitted: December 10, 2014

Summary: Wayne Jones dba Imani Resource Service (''WJIR'') seeks a Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets

Export Trade

Products: All Products.

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (*e.g.,* Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, WJIR may provide and/or arrange for the provision of Export Trade Facilitation Services.

Dated: December 18, 2014.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration.

[FR Doc. 2014–30211 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee: Open Meeting by Teleconference

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of an open meeting by teleconference.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting by teleconference on Tuesday, January 13, 2015. The meeting is open to the public and the call-in information will be provided upon request.

DATES: January 13, 2015, from 1 p.m. to 2 p.m. Eastern Standard Time (EST). Members of the public wishing to participate in the teleconference must notify Andrew Bennett at the contact information below by 5 p.m. EST on Friday, January 9, 2015, in order to pre-register for access to the teleconference line and to receive relevant information in advance of the meeting.

FOR ALL FURTHER INFORMATION CONTACT: *Including Teleconference Access:* Andrew Bennett, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–5235; email: *Andrew.Bennett@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC was re-chartered on June 12, 2014. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries.

During the January 13th teleconference meeting of the RE&EEAC, committee members will discuss priority issues identified in advance by the interim Sub-Committee for

Organization and Priority Issues. The meeting will be open to the public and individuals wishing to join the meeting and receive call-in information may contact the Committee's Designated Federal Officer, Andrew Bennett, Office of Energy and Environmental Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–5235; email: *Andrew.Bennett@trade.gov.*

A limited amount of time before the close of the meeting will be available for pertinent oral comments from members of the public joining the conference call. To accommodate as many speakers as possible, the time for public comments will be limited to two minutes per person. Individuals wishing to reserve additional speaking time during the meeting must contact Mr. Bennett and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant by 5 p.m. EST on Friday, January 9, 2015. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the teleconference, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Mr. Bennett for distribution to the participants in advance of the teleconference.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Andrew Bennett, Office of Energy and Environmental Industries, U.S. Department of Commerce, Mail Stop: 4053, 1401 Constitution Avenue NW., Washington, DC 20230. To be considered during the teleconference, written comments must be received no later than 5 p.m. EST on Friday, January 9, 2015, to ensure transmission to the Committee prior to the teleconference. Comments received after that date will be distributed to the members but may not be considered on the teleconference.

Copies of RE&EEAC meeting minutes will be available within 30 days following the meeting.

Dated: December 19, 2014.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2014–30251 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Permits for Incidental Taking of Endangered or Threatened Species

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 23, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Heather Coll, (301) 427–8455 or *Heather.Coll@NOAA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR part 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (1) Applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, the National Marine Fisheries Service (NMFS) recognizes certain exceptions to that prohibition, including habitat restoration actions taken in accord with approved state watershed action plans. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

II. Method of Collection

Currently, most information is collected on paper, but in some instances, there is electronic access and capability.

III. Data

OMB Number: 0648–0230.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

Estimated Number of Respondents: 13.

Estimated Time per Response: 80 hours for a permit application (including Habitat Conservation Plans), 40 minutes for transfer of an incidental take permit; 8 hours for a permit report, 30 minutes for a Certificate of Inclusion and 10 hours for a watershed plan.

Estimated Total Annual Burden Hours: 472.

Estimated Total Annual Cost to Public: $450 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–30181 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD673

Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for January 12, 2015, 3–4:30 p.m., Eastern Standard Time.

ADDRESSES: Conference call. Public access is available at 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to attend may contact Heidi Lovett, (301) 427–8004; email: *heidi.lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The charter and other information are located online at *http://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

The Committee is convening to discuss and finalize recommendations on the candidates for the new Climate and Marine Resources Task Force and the Aquaculture Task Force for submission to the NOAA Fisheries Assistant Administrator. Other administrative matters may be considered. This agenda is subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett, 301–427–8004 by January 2, 2015.

Dated: December 18, 2014.

Paul Doremus,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–30213 Filed 12–23–14; 8:45 am]

BILLING CODE 3510–22–P

COUNCIL ON ENVIRONMENTAL QUALITY

Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies; Final Interagency Guidelines

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability of final interagency Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies.

SUMMARY: Section 2031 of the Water Resources Development Act of 2007 (Water Resources Development Act), Public Law 110–114, directed the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies'' (Principles and Guidelines), dated March 10, 1983, consistent with several considerations enumerated in the Water Resources Development Act. The revised Principles and Guidelines, now referenced as the Principles, Requirements and Guidelines (PR&G), consist of three key components: (1) The Principles and Requirements (formerly called Principles and Standards), setting out broad policy and principles that guide investments; (2) the Interagency Guidelines, providing guidance to Federal agencies for determining the applicability of the Principles and Guidelines and for developing agency specific implementing procedures for formulating, evaluating, and comparing water resources projects, programs, activities and related actions; and (3) the Agency Specific Procedures, outlining agency-specific procedures for incorporating the Principles and Requirements into agency missions and programs.

This notice informs the public that the Interagency Guidelines, the second key component of the modernized PR&G, are finalized and available at *www.whitehouse.gov/administration/eop/ceq/initiatives/PandG.* The draft Interagency Guidelines were published in the **Federal Register** with a request for comments on March 27, 2013. Subsequent to public review and comment period, the final version of the Interagency Guidelines was developed through a collaborative interagency process that promoted the open exchange of information and perspectives. The process has engaged the public through formal public review and workshops. The updated and modernized PR&G will improve Federal government decision making related to investment in water resource projects and, thus, improve how our country plans for infrastructure projects.

DATES: Effective June 15, 2015.

ADDRESSES: The Interagency Guidelines are available at *www.whitehouse.gov/administration/eop/ceq/initiatives/PandG.*

FOR FURTHER INFORMATION CONTACT: Alexis Segal, Council on Environmental Quality, at 202–395–5750.

SUPPLEMENTARY INFORMATION: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directed the Secretary of the Army to revise the ''Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,'' dated March 10, 1983, consistent with several considerations enumerated in the Water Resources Development Act. The revised Principles and Requirements will provide guidance for agencies to implement the Principles and Guidelines.

Additional information on the revision process is available a *http://www.whitehouse.gov/administration/eop/ceq/initiatives/PandG.*

Authority: Section 2031 of the Water Resources Development Act of 2007, Pub. L. 110–114, 121 Stat. 1041.

Dated: December 18, 2014.

Brenda Mallory,

General Counsel, Council on Environmental Quality.

[FR Doc. 2014–30170 Filed 12–23–14; 8:45 am]

BILLING CODE 3225–F5–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Independent Review Panel on Military Medical Construction Standards; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Independent Review Panel on Military Medical Construction Standards (''the Panel'').

DATES:

Wednesday, January 14, 2015

9:00 a.m.–11:15 a.m. EST (Open Session)
11:15 a.m.–12:15 p.m. EST (Preparatory Session)
12:15 p.m.–4:45 p.m. EST (Open Session)

ADDRESSES: Defense Health Headquarters (DHHQ), Pavilion Salons B–C, 7700 Arlington Blvd., Falls Church, Virginia 22042 (escort required; see guidance in **SUPPLEMENTARY INFORMATION**, ''Public's Accessibility to the Meeting.'').

FOR FURTHER INFORMATION CONTACT: The Executive Director is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *christine.bader@dha.mil,* (703) 681–6653, Fax: (703) 681–9539. For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *kendal.brown.ctr@dha.mil,* (703) 681–6670, Fax: (703) 681–9539.

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.

Purpose of the Meeting

At this meeting, the Panel will address the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year 2011 (Pub. L. 111–383), section 2852(b) requirement to provide the Secretary of Defense independent advice and recommendations regarding a construction standard for military medical centers to provide a single standard of care, as set forth below:

a. Reviewing the unified military medical construction standards to determine the standards consistency with industry practices and benchmarks for world class medical construction;

b. Reviewing ongoing construction programs within the DoD to ensure medical construction standards are uniformly applied across applicable military centers;

c. Assessing the DoD approach to planning and programming facility improvements with specific emphasis on facility selection criteria and proportional assessment system; and facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the Military Departments;

d. Assessing whether the Comprehensive Master Plan for the National Capital Region Medical (''the Master Plan''), dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Pub. L. 111–84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the Master Plan result in world class military medical centers in the National Capital Region; and

e. Making recommendations regarding any adjustments of the Master Plan that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the Panel meeting is open to the public from 9:00 a.m. to 11:15 a.m. and from 12:15 p.m. to 4:45 p.m. on January 14, 2015, as the Panel will meet in an open forum for public deliberation of the annual report and receive briefings on military medical construction, sustainment, restoration, and modernization standards.

Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the January 14, 2015, meeting, as well as any other materials presented in the meeting, may be obtained at the meeting.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Wednesday, January 7, 2015, to register and make arrangements for an escort, if necessary. Public attendees requiring escort should arrive with sufficient time to complete security screening no later than 30 minutes prior to the start of each meeting. To complete security screening, please come prepared to present two forms of identification and one must be a picture identification card.

Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Statements

Any member of the public wishing to provide comments to the Panel may do so in accordance with 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the Panel may do so by submitting a written statement to the Executive Director (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

If the written statement is not received at least five (5) business days prior to the meeting, the Executive Director may choose to postpone consideration of the statement until the next open meeting.

The Executive Director will review all timely submissions with the Panel Chairperson and ensure they are provided to members of the Panel before the meeting that is subject to this notice. After reviewing the written comments, the Panel Chairperson and the Executive Director may choose to invite the submitter to orally present their issue during an open portion of this meeting or at a future meeting. The Executive Director, in consultation with the Panel Chairperson, may allot time for members of the public to present their issues for review and discussion by the Panel.

Dated: December 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–30159 Filed 12–23–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0142]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Impacts of a Detailed Checklist on Formative Feedback to Teachers

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 23, 2015.

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–0142 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Christopher Boccanfusco, 202–219–1674.

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: Impacts of a Detailed Checklist on Formative Feedback to Teachers.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 10,788.

Total Estimated Number of Annual Burden Hours: 1,784.

Abstract: The Department of Education, in consultation with SEDL, is planning a clustered randomized evaluation in New Mexico to test the effectiveness of materials intended to improve the feedback that principals provide in one-on-one conferences to their teachers about their classroom instruction. New Mexico Public Education Department (NM PED) staff has identified the topic of principal feedback to teachers as an area where New Mexico needs assistance. It has limited resources and time to focus on the post-observation conference step in the teacher evaluation cycle. This impact study will examine whether an enhanced feedback guide relative to business-as-usual guidance to principals and teachers improves the structure and content of the principal-teacher feedback conversation, improves quality of teacher instruction as measured by subsequent formal observation ratings, and increases student achievement and state standardized tests.

Dated: December 19, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–30153 Filed 12–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0138]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Evaluation of the Comprehensive Technical Assistance Centers

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 23, 2015.

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–0138 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 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Johnson, 202–208–7849.

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: Evaluation Of The Comprehensive Technical Assistance Centers.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 764.

Total Estimated Number of Annual Burden Hours: 332.

Abstract: The National Evaluation of the Comprehensive Technical Assistance Centers will examine and document how the Comprehensive Center program and its individual centers intend to build SEA capacity and what types of activities they actually conduct to build capacity. The study will use surveys and interviews of center staff and technical assistance recipients, as well as technical assistance event observations, to collect information about how the Comprehensive Centers design their work, how they operate, and the results of their work.

Dated: December 19, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–30152 Filed 12–23–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 28, 2015, 1:00 p.m.–5:15 p.m.

ADDRESSES: Cities of Gold Conference Center, 10–A Cities of Gold Road, Pojoaque, New Mexico 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@nnsa.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Lee Bishop
Establishment of a Quorum: Roll Call and Excused Absences, William Alexander
Welcome and Introductions, Doug Sayre, Chair
Approval of Agenda and Meeting Minutes of November 19, 2014, and December 10, 2014
1:15 p.m. Old Business
- Written Reports
- Other items

1:30 p.m. New Business
1:45 p.m. Update from DDFO, Lee Bishop
2:00 p.m. Presentation on Memorandum of Understanding on Interface with the National Nuclear Security Administration and EM, Kim Davis Lebak and Pete Maggiore
3:00 p.m. Review of Federal Contract Types and Request for Proposals, TBA
3:45 p.m. Update from Liaisons
- Update from New Mexico Environment Department, Secretary Ryan Flynn
- Update from DOE, Pete Maggiore
- Update from Los Alamos National Laboratory, Randy Erickson

4:45 p.m. Public Comment Period
5:00 p.m. Wrap-Up and Comments from NNMCAB Members
5:15 p.m. Adjourn, Lee Bishop

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/*.

Issued at Washington, DC, on December 18, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–30173 Filed 12–23–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: January 9, 2015, 9:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC in the Lecture Room.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Dr. Ashley Predith at *apredith@ostp.eop.gov,* (202) 456–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on January 9, 2015 from 9:00 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to hear from speakers about technology development in the United States and also about the aging population. PCAST will also discuss developments in environmental science. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST may hold a closed meeting of approximately one hour with the President on January 9, 2015, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on January 9, 2015 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. Eastern Time on December 31, 2014. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on December 31, 2014 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Dr. Ashley Predith at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on December 18, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–30175 Filed 12–23–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Excess Uranium Management: Effects of DOE Transfers of Excess Uranium on Domestic Uranium Mining, Conversion, and Enrichment Industries; Request for Information

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Extension of comment period.

SUMMARY: On December 8, 2014, the U.S. Department of Energy (DOE) published a request for information (RFI) seeking comment on certain issues related to DOE's plan to issue a new Secretarial Determination covering continued transfers of uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant and for down-blending of highly-enriched uranium to low-enriched uranium. The RFI established a January 7, 2015, deadline for the submission of written comments. DOE is extending the comment period to January 22, 2015.

DATES: DOE will accept comments, data, and information responding to this RFI submitted on or before January 22, 2015.

ADDRESSES: Interested persons may submit comments by any of the following methods.

1. *Email: RFI-UraniumTransfers@hq.doe.gov.* Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

2. *Postal Mail:* Mr. David Henderson, U.S. Department of Energy, Office of

Nuclear Energy, Mailstop NE–52, 19901 Germantown Rd., Germantown, MD 20874–1290. If possible, please submit all items on a compact disk (CD), in which case it is not necessary to include printed copies.

3. *Hand Delivery/Courier:* Mr. David Henderson, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–52, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–2590. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name for this request for information. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Mr. David Henderson, U.S. Department of Energy, Office of Nuclear Energy, Mailstop NE–52, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–2590. Email: *David.Henderson@Nuclear.Energy.Gov.*

SUPPLEMENTARY INFORMATION: On December 8, 2014, the U.S. Department of Energy (DOE) published a request for information (RFI) in the **Federal Register** (79 FR 72661). DOE noted that it is planning to issue a new Secretarial Determination covering continued transfers of uranium for cleanup services at the Portsmouth Gaseous Diffusion Plant and for down-blending of highly-enriched uranium to low-enriched uranium. The RFI solicited information about the effects of the proposed transfers in the uranium markets and possible consequences for the domestic uranium mining, conversion, and enrichment industries. The RFI also solicited recommendations about factors that DOE should consider and/or the methodology it should use in assessing the possible impacts of transfers. The RFI established a January 7, 2015, deadline for the submission of written comments. DOE has received requests from the public for extension of the public comment period. In response to those requests and other considerations, DOE is extending the comment period to January 22, 2015 to provide the public additional time for comment.

Issued in Washington, DC, on December 18, 2014.

Peter B. Lyons,

Assistant Secretary for Nuclear Energy, Office of Nuclear Energy.

[FR Doc. 2014–30177 Filed 12–23–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–23–000; PF14–12–000]

Southern Natural Gas Company, LLC; Notice of Application

Take notice that on December 3, 2014, Southern Natural Gas Company, LLC (Southern), 569 Brookwood Village Suite 749, Birmingham, Alabama 35209, filed in the above referenced docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), and Part 157 and 284 of the Commission's regulations requesting authorization to construct and operate the North Main Line Relocation Project (Project). Southern proposes to relocate (total of 3.91 miles) and abandon in place (total of 3.41 miles) a segment of each of its three North Main Lines and the Calera Branch Line in Jefferson County, Alabama. The project is designed to ensure the continued safe and efficient operation of Southern's existing fully subscribed pipeline facilities at their certificated design capacity all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application may be directed to Glenn A. Sheffield, Director, Rates & Regulatory Affairs, Southern Natural Gas Company, L.C.C., 569 Brookwood Village Suite 749, Birmingham, Alabama 35209, *glenn_sheffield@kindermorgan.com,* (205) 325–3813, or Tina Hardy at *tina_hardy@kindermorgan.com,* (205) 325–3668.

Specifically, Southern proposes to abandon in place 2.87 miles of existing and parallel 22-inch North Main Line, 24-inch North Main Line Loop, and 24-inch 2nd North Main Line and 0.54 miles of existing Calera Branch Line. Southern also proposes to construct 3.48 miles of relocated segments of each of the three North Main Lines with new above-ground gate settings on each of the three lines and 0.43 miles of relocated Calera Branch Line to replace the abandoned segments. Southern states that the existing lines are located in the path of the ongoing longwall coal mining operations that are planned to extend to the area underneath the existing pipeline facilities by April 1, 2016. Southern estimates the cost of this project to be $42,358,978 and it will be rolled into Southern's existing rates.

On June 24, 2014, the Commission staff granted Southern's request to utilize the Pre-Filing Process and assigned Docket No. PF14–12–000 to staff activities involved in the Project. Now, as of the filing of the December 3, 2014 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP15–23–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on January 7, 2014.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30052 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–26–000]

Kaiser-Frontier Midstream, LLC; Notice of Application

Take notice that on December 5, 2014, Kaiser-Frontier Midstream, LLC (Kaiser-Frontier), 6733 South Yale Avenue, Tulsa, Oklahoma 74136, filed with the Federal Energy Regulatory Commission an application under Section 7(c) of the Natural Gas Act (NGA) authorizing: Kaiser-Frontier to construct, install, own, operate and maintain a 31.2 mile natural gas pipeline, the Silo Pipeline, in Laramie County, Wyoming, and Weld County, Colorado; a blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations; and waiver of the Commission's requirements regarding rates, tariffs and open access operations, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

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.

Any questions regarding this Application should be directed to John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 12th St. NW., Suite 630, Washington, DC 20004, by telephone at (202) 737–8060 or by email at *jstaffier@sdsatty.com* or Brian Jobe, Kaiser-Frontier Midstream, LLC, 6733 South Yale, Tulsa, OK 74136, by telephone at (918) 491–4536 or by email at *brianj@kfoc.net.*

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 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties.

However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Daylight Savings Time on January 7, 2015.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30053 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–49–000.
Applicants: Source Power & Gas LLC.
Description: Application Under Section 203 of Source Power & Gas LLC.
Filed Date: 12/11/14.
Accession Number: 20141211–5207.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: EC15–50–000.
Applicants: American Transmission Company LLC.
Description: Application of ATCLLC for Authority to Acquire Transmission Facilities Under Section 203 of the FPA.
Filed Date: 12/12/14.
Accession Number: 20141212–5113.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: EC15–51–000.
Applicants: American Transmission Company LLC.
Description: Application of ATCLLC for Authority to Acquire Transmission Facilities Under Section 203 of the FPA.
Filed Date: 12/12/14.
Accession Number: 20141212–5114.
Comments Due: 5 p.m. ET 1/2/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–609–000.
Applicants: Kansas City Power & Light Company.
Description: Notice of Cancellation of Interchange Agreement of Kansas City Power & Light Company.
Filed Date: 12/11/14.
Accession Number: 20141211–5043.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–617–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 1518R8 Arkansas Electric Cooperative Corp NITSA NOA to be effective 12/1/2014.
Filed Date: 12/12/14.
Accession Number: 20141212–5033.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–618–000.
Applicants: PJM Interconnection, L.L.C., Virginia Electric and Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Dominion submits Amended Service Agreement No. 3453 to be effective 12/12/2014.
Filed Date: 12/12/14.
Accession Number: 20141212–5052.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–619–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement Nos. 336, 337 and modifications to 51741 and 174 to be effective 12/10/2014.
Filed Date: 12/12/14.
Accession Number: 20141212–5071.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–620–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–12–12_NVE_ABAOA_2d_Amendment to be effective 2/25/2015.
Filed Date: 12/12/14.
Accession Number: 20141212–5111.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–621–000.
Applicants: Pacific Crest Power, LLC.
Description: Initial rate filing per 35.12 MBR Application to be effective 1/30/2015.
Filed Date: 12/12/14.
Accession Number: 20141212–5115.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–622–000.
Applicants: Ridgetop Energy, LLC.
Description: Initial rate filing per 35.12 MBR Application to be effective 1/30/2015.
Filed Date: 12/12/14.
Accession Number: 20141212–5124.
Comments Due: 5 p.m. ET 1/2/15.

Docket Numbers: ER15–623–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to the OATT and RAA re Capacity Performance to be effective 4/1/201.
Filed Date: 12/12/14.
Accession Number: 20141212–5126.
Comments Due: 5 p.m. ET 1/12/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–6–000.
Applicants: ITC Midwest LLC.
Description: Application of ITC Midwest LLC under Section 204 of the Federal Power Act.
Filed Date: 12/12/14.
Accession Number: 20141212–5107.
Comments Due: 5 p.m. ET 1/2/15.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR15–4–000.
Applicants: North American Electric Reliability Corp.
Description: Petition of North American Electric Reliability Corporation for Approval of Risk-Based Registration Initiative Rules of Procedure Revisions.
Filed Date: 12/11/14.
Accession Number: 20141211–5214.
Comments Due: 5 p.m. ET 1/12/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 12, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30204 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–2584–002.
Applicants: San Diego Gas & Electric Company.
Description: Compliance filing per 35: SDGE Amendment 2 to WDAT Appendix H SGIA and GIP to be effective 10/3/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5214.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–229–001.
Applicants: The Empire District Electric Company.
Description: Tariff Amendment per 35.17(b): Supplement to Revised GFR Filing to be effective 11/1/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5315.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–281–001.
Applicants: Duke Energy Indiana, Inc.
Description: Tariff Amendment per 35.17(b): Amendment to Hoosier Facilities Agreement Filing to be effective 1/1/2015.
Filed Date: 12/18/14.
Accession Number: 20141218–5231.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–652–000.
Applicants: Western Massachusetts Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revision to Market Based Rate Tariff NUSCO Electric Rate Schedule, FERC No. 7 to be effective 2/16/2015.
Filed Date: 12/18/14.
Accession Number: 20141218–5185.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–653–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 193—Amendment 3, ANPP Hassayampa Switchyard to be effective 11/21/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5186.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–654–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement Nos. 4057 (Z2–043) and 4058 (Z2–044) to be effective 11/18/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5187.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–655–000.
Applicants: Integrys Energy Services, Inc.
Description: Compliance filing per 35: Revisions to Market Based Rate Tariff to be effective 12/19/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5226.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–656–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 3454; Queue No. X1–094 to be effective 11/19/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5234.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–657–000.
Applicants: Integrys Energy Services of New York, Inc.
Description: Compliance filing per 35: Revisions to Market-Based Rate Tariffs to be effective 12/19/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5235.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–658–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement No. 3276; Queue No. X1–012 to be effective 11/19/2014.
Filed Date: 12/18/14.
Accession Number: 20141218–5280.
Comments Due: 5 p.m. ET 1/8/15.

Docket Numbers: ER15–659–000.
Applicants: Silver Bear Power, LLC.
Description: Request for cancellation of Market Based Rate tariff of Silver Bear Power, LLC.
Filed Date: 12/18/14.
Accession Number: 20141218–5284.
Comments Due: 5 p.m. ET 1/8/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–7–000.
Applicants: Southwestern Electric Power Company.
Description: Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of Southwestern Electric Power Company.
Filed Date: 12/18/14.
Accession Number: 20141218–5247.
Comments Due: 5 p.m. ET 1/8/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30191 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–1830–000; ER08–1317–003.
Applicants: California Independent System Operator Corporation.
Description: Interconnection Queue Quarterly Progress Report, Q3 2014, and Motion for Relief from Reporting Requirement of California Independent System Operator Corporation.
Filed Date: 10/30/14.
Accession Number: 20141030–5232.
Comments Due: 5 p.m. ET 12/24/14.

Docket Numbers: ER11–3391–003; *ER11–4593–001; ER11–4592–001; ER11–4591–001; ER11–4589–001; ER10–2400–004.*
Applicants: Dempsey Ridge Wind Farm, LLC, EcoGrove Wind LLC, Red Hills Wind Project, L.L.C., Blue Canyon Windpower LLC, Tatanka Wind Power, LLC, Nevada Solar One, LLC.
Description: Errata to November 3, 2014 Notice of Non-Material Change in Status of AENAC Sellers.
Filed Date: 12/17/14.
Accession Number: 20141217–5121.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER12–162–010; *ER11–3876–013; ER11–2044–013; ER10–2611–011.*
Applicants: Bishop Hill Energy II LLC, Cordova Energy Company LLC, MidAmerican Energy Company, Saranac Power Partners, L.P.
Description: Notification of Change in Status of the BHE MBR Sellers.

Filed Date: 12/16/14.
Accession Number: 20141216–5311.
Comments Due: 5 p.m. ET 1/6/15.

Docket Numbers: ER14–2952–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment per 35.17(b): 2014–12–17_Deficiency Response Amd Sch 43, 43G, 43H to be effective 12/1/2014.
Filed Date: 12/17/14.
Accession Number: 20141217–5154.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–406–001.
Applicants: LG&E Energy Marketing Inc.
Description: Tariff Amendment per 35.17(b): LEM Errata to MBR Tariff 205 Filing to be effective 11/15/2014.
Filed Date: 12/16/14.
Accession Number: 20141216–5274.
Comments Due: 5 p.m. ET 1/6/15.

Docket Numbers: ER15–535–001.
Applicants: Nevada Power Company.
Description: Compliance filing per 35: OATT Order No. 676–H Compliance Filing correction to be effective 2/2/2015.
Filed Date: 12/17/14.
Accession Number: 20141217–5156.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–567–001.
Applicants: NiGen, LLC.
Description: Second Supplement to December 10, 2014 NiGen, LLC tariff filing.
Filed Date: 12/16/14.
Accession Number: 20141216–5321.
Comments Due: 5 p.m. ET 12/26/14.

Docket Numbers: ER15–639–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Schedule 6 of the Operating Agreement re Proposal Window Fee to be effective 2/16/2015.
Filed Date: 12/16/14.
Accession Number: 20141216–5253.
Comments Due: 5 p.m. ET 1/6/15.

Docket Numbers: ER15–640–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. FCA 9 Imports Informational Filing.
Filed Date: 12/16/14.
Accession Number: 20141216–5313.
Comments Due: 5 p.m. ET 12/23/14.

Docket Numbers: ER15–641–000.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Withdrawal per 35.15: Notice of Termination of California Flats Solar E&P Agreement to be effective 11/14/2014.
Filed Date: 12/17/14.
Accession Number: 20141217–5075.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–642–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Systems, Incorporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2014–12–17_SA 2724 ATC–SWLP Transmission Upgrade Agreement to be effective 11/26/2014.
Filed Date: 12/17/14.
Accession Number: 20141217–5077.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–643–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to OATT Att K-Appx and OA Schedule 1 re Energy and Reserve Pricing to be effective 3/1/2015.
Filed Date: 12/17/14.
Accession Number: 20141217–5079.
Comments Due: 5 p.m. ET 1/7/15.

Docket Numbers: ER15–644–000.
Applicants: Idaho Power Company.
Description: Compliance filing per 35: Resubmitted Order No. 676–H Waiver Request and Compliance Filing to be effective 2/1/2015.
Filed Date: 12/17/14.
Accession Number: 20141217–5136.
Comments Due: 5 p.m. ET 1/7/15.

Take notice that the Commission received the following electric reliability filings:
Docket Numbers: RD15–2–000.
Applicants: North American Electric Reliability Corp.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard PRC–006–2.
Filed Date: 12/15/14.
Accession Number: 20141215–5325.
Comments Due: 5 p.m. ET 1/16/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30207 Filed 12–23–14; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:
Docket Numbers: EC15–52–000.
Applicants: Badger Creek Limited, Double C Generation Limited Partnership, High Sierra Limited, Kern Front Limited.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Badger Creek Limited, et al.
Filed Date: 12/12/14.
Accession Number: 20141212–5186.
Comments Due: 5 p.m. ET 1/2/15.

Take notice that the Commission received the following exempt wholesale generator filings:
Docket Numbers: EG15–27–000.
Applicants: KMC Thermo, LLC.
Description: Self-Certification of EWG Status for KMC Thermo, LLC.
Filed Date: 12/12/14.
Accession Number: 20141212–5189.
Comments Due: 5 p.m. ET 1/2/15.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER13–1139–008; ER14–2630–001.
Applicants: Imperial Valley Solar 1, LLC, Regulus Solar, LLC.
Description: Notification of Non-Material Change in Status of Imperial Valley Solar 1, LLC and Regulus Solar, LLC.
Filed Date: 12/15/14.
Accession Number: 20141215–5202.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER14–2154–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing per 35: 2014–12–15_RPU Compliance Filing to be effective N/A.
Filed Date: 12/15/14.
Accession Number: 20141215–5139.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–567–001.
Applicants: NiGen, LLC.
Description: Supplement to December 10, 2014 NiGen, LLC tariff filing.
Filed Date: 12/12/14.
Accession Number: 20141212–5173.

Comments Due: 5 p.m. ET 12/26/14.

Docket Numbers: ER15–624–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Modifications to San Juan Project Participation Agreement to be effective 7/1/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5032.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–625–000.
Applicants: Public Service Company of New Mexico.
Description: Tariff Withdrawal per 35.15: Notice of Termination of Rate Schedule Designation of Rate Schedule 171 to be effective 7/1/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5033.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–626–000.
Applicants: North Energy Power, LLC.
Description: Initial rate filing per 35.12 Baseline new to be effective 12/16/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5067.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–627–000.
Applicants: Golden Spread Electric Cooperative, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Pleasant Hill SGIA Third Amendment to be effective 11/30/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5111.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–628–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): GIA and Distribution Service Agmt with Wind Stream Operations, LLC to be effective 12/9/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5134.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–629–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 4055; Queue No. Z2–082 to be effective 11/13/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5138.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–630–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Attachment AE (MPL) Section 4.1 to be effective 2/13/2015.
Filed Date: 12/15/14.
Accession Number: 20141215–5169.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–631–000.
Applicants: Crawfordsville Energy, LLC.
Description: Initial rate filing per 35.12 Market Based Rate Tariff to be effective 2/15/2015.
Filed Date: 12/15/14.
Accession Number: 20141215–5214.
Comments Due: 5 p.m. ET 1/5/15.

Docket Numbers: ER15–632–000.
Applicants: CID Solar, LLC.
Description: Baseline eTariff Filing per 35.1: Baseline—CID Solar, LLC MBR Tariff to be effective 12/16/2014.
Filed Date: 12/15/14.
Accession Number: 20141215–5218.
Comments Due: 5 p.m. ET 1/5/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–49–001.
Applicants: Entergy Louisiana, LLC, Entergy Texas, Inc.
Description: Supplement to July 30, 2014 Application to amend existing FPA Section 204 authority of Entergy Texas, Inc.
Filed Date: 12/12/14.
Accession Number: 20141212–5188.
Comments Due: 5 p.m. ET 12/22/14.

Docket Numbers: ES15–2–000.
Applicants: National Grid USA, Nantucket Electric Company, The Narragansett Electric Company, New England Power Company, Niagara Mohawk Power Corporation, New England Hydro-Transmission Electric, National Grid Generation LLC.
Description: Amendment to October 31, 2014 Application of National Grid USA, on behalf of Nantucket Electric Company, et al., for Authority to Issue Securities.
Filed Date: 12/12/14.
Accession Number: 20141212–5185.
Comments Due: 5 p.m. ET 12/22/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 15, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30205 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12721–006–MA]

Pepperell Hydro Company, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Pepperell Hydroelectric Project, located on the Nashua River, in the towns of Pepperell and Groton, Middlesex County, Massachusetts, and has prepared an Environmental Assessment (EA).

The EA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. 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, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments 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. 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–12721–006.

For further information, contact Brandon Cherry at (202) 502–8328 or *brandon.cherry@ferc.gov.*

Dated: December 8, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–29708 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–4–000]

Western Area Power Administration; Notice of Filing

Take notice that on December 4, 2014, the Western Area Power Administration submitted a tariff filing per 300.10: Rate Schedule L–F10, placing Firm Electric Service rates for the Loveland Area Projects into effect beginning 1/1/2015.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 5, 2015.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30045 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7563–000]

Meserve, Richard A.; Notice of Filing

Take notice that on December 18, 2014, Richard A. Meserve submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825(b) and part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 8, 2015.

Dated: December 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30192 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–2–000]

Western Area Power Administration; Notice of Filing

Take notice that on November 26, 2014, the Western Area Power Administration submitted a tariff filing per 10 CFR 903.23: UGP_PSMBP–ED_WAPA 168–20141117, to be effective 1/1/2015. (Extension of the Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services Rates-Western Area Power Administration-Rate Order No. WAPA–168).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 26, 2014.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30043 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–3–000]

Western Area Power Administration; Notice of Filing

December 17, 2014.

Take notice that on December 4, 2014, the Western Area Power Administration submitted a tariff filing per 300.10: UGP_PSMBP–ED_WAPA 166–20141117 to be effective 1/1/2015. (Rate Adjustment for the P–SMBP—ED—Western Area Power Administration-Rate Order No. WAPA–166).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 5, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30044 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF15–5–000]

Southwestern Power Administration; Notice of Filing

Take notice that on December 8, 2014, the Southwestern Power Administration submitted a tariff filing per 300.10: 2014 RDW–14 Rate Schedule Filing 1 to be effective 1/1/2015, proposing a revised power rate that will provide revenues sufficient to satisfy cost recovery criteria.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on January 7, 2015.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30046 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[In the matter of: Docket Nos. ER99–1004–008, ER00–2738–007, ER01–1721–005, ER00–2740–007, ER02–564–005, ER02–862–009, ER06–653–002, ER01–1570–001, ER02–73–009, ER06–1410–004, ES07–53–000, ES07–53–001, ES07–55–000, ES07–55–001, Entergy Nuclear Generation Company, Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Power Ventures, LP, Entergy Nuclear Power Marketing, LLC, Northern Iowa Windpower, LLC, Llano Estacado Wind, LP, Entergy Nuclear Palisades, LLC]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Entergy Nuclear Generation Company, Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Power Ventures, LP, Entergy Nuclear Power Marketing, LLC, Northern Iowa Windpower, LLC, Llano Estacado Wind, LP, and Entergy Nuclear Palisades, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 23, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30190 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–631–000]

Crawfordsville Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Crawfordsville Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 6, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30050 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–622–000]

Ridgetop Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Ridgetop Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 6, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30048 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–626–000]

North Energy Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of North Energy Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 6, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30049 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–621–000]

Pacific Crest Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Pacific Crest Power, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 6, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30047 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–634–000]

Cottonwood Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Cottonwood Solar, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal

Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is January 6, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30051 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–27–000]

Trailblazer Pipeline Company LLC; Notice of Request Under Blanket Authorization

Take notice that on December 9, 2014, Trailblazer Pipeline Company LLC (Trailblazer), 4200 West 115th Street, Suite 350, Leawood, Kansas 66211–2609, filed a prior notice application pursuant to section 7(c) of the Natural Gas Act (NGA) and sections 157.205 and 157.208 (b) of the Federal Energy Regulatory Commission's (Commission) regulations under the NGA, and Trailblazer's blanket certificate issued in Docket No. CP82–497–000. Trailblazer seeks authorization to construct and operate certain natural gas transportation facilities in Weld County, Colorado and Kimball County, Nebraska (Niobrara Lateral). Specifically, Niobrara Lateral project consists of: (1) Approximately 16 miles of ten-inch diameter high-pressure lateral pipeline that will extend from an existing third-party natural gas processing facility in Weld County, Colorado to Trailblazer's mainline, and then continue to a new interconnect between the proposed lateral pipeline and the mainline of Rockies Express Pipeline LLC; (2) measurement facilities; and (3) certain ancillary facilities, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed Skip George, Manager Regulatory, Tallgrass Interstate Gas Transmission, LLC, 370 Van Gordon St., Lakewood, Colorado 80228–1519, or by phone (303) 763–3251.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30054 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–28–000]

Cadeville Gas Storage LLC; Notice of Request Under Blanket Authorization

Take notice that on December 12, 2014, Cadeville Gas Storage LLC (Cadeville), Three Riverway, Suite 1350, Houston, Texas 77056, filed in Docket No. CP15–28–000, a prior notice request pursuant to section 157.214 of the Commission's regulations under the Natural Gas Act (NGA) as amended, requesting authorization to increase the maximum average bottomhole pressure to 3,124 psia, thereby increasing maximum storage capacity by 1.9 Bcf to a total of 23.7 Bcf, and working gas capacity by 1.7 Bcf to 18.7 Bcf at Cadeville's natural gas storage facility in Ouachita Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may 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 Robert B. Raines, Jr., Senior Vice President, Engineering and Operations, Cadeville Gas Storage LLC, Three Riverway, Suite 1350, Houston, Texas 77056, by telephone at (713) 350–2506, by facsimile at (713) 350–2550, or by email at *bobby.raines@cardinalgs.com*.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and protest to the request, pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205). If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: December 17, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–30055 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

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 may attend the following meeting related to the transmission planning activities of the Southern Company Services, Inc.

The Southeastern Regional Transmission Planning (SERTP) Process 4th Quarter Meeting

December 18, 2014, 10:00 a.m.–3:00 p.m. (EST)

The above-referenced meeting will be via web conference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *www.southeasternrtp.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–83, ER13–1928, *Duke Energy Carolinas/Carolina Power & Light*
Docket Nos. ER13–908, ER13–1941, *Alabama Power Company et al.*
Docket Nos. ER13–913, ER13–1940, *Ohio Valley Electric Corporation*
Docket Nos. ER13–897, ER13–1930, *Louisville Gas and Electric Company and Kentucky Utilities Company*
Docket Nos. ER13–107, ER13–1935, *South Carolina Electric & Gas Company*
Docket Nos. ER13–80, ER13–1932, *Tampa Electric Company*
Docket No. ER13–86, *Florida Power Corporation*
Docket Nos. ER13–104, ER13–1929, *Florida Power & Light Company*
Docket No. ER13–1922, *Duke Energy Florida (Progress Energy Florida)*
Docket Nos. ER13–195, ER13–198, ER13–1927, ER13–1936, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*

For more information, contact Valerie Martin, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6139 or *Valerie.Martin@ferc.gov.*

Dated: December 12, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–30206 Filed 12–23–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0737; FRL–9920–77]

Benefits of Neonicotinoid Seed Treatment to Soybean Production; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of October 22, 2014, concerning the assessment the Agency conducted as part of its ongoing re-evaluation of clothianidin, imidacloprid, and thiamethoxam under the registration review program. This assessment examines the use of clothianidin, imidacloprid, and thiamethoxam seed treatments in terms of the extent of use and the pests targeted in order to characterize overall benefits to soybean production nationwide. In response to requests, the EPA is reopening the public comment period of EPA's analysis of Benefits of Neonicotinoid Seed Treatments to Soybean Production. This document reopens the comment period for 30 days to January 23, 2015.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0737, must be received on or before January 23, 2015.

ADDRESSES: Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 22, 2014 (79 FR 63118) (FRL–9917–55).

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* Carissa Cyran, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8781; email address: *cyran.carissa@epa.gov.*

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: This document reopens the public comment period established in the **Federal Register** document of October, 22, 2014. In that document, the Agency announced that it had conducted an assessment as part of its ongoing re-evaluation of clothianidin, imidacloprid, and thiamethoxam under the registration review program. This assessment examines the use of clothianidin, imidacloprid, and thiamethoxam seed treatments in terms of the extent of use and the pests targeted in order to characterize overall benefits to soybean production nationwide. EPA is hereby reopening the comment period for 30 days, to January 24, 2015.

To submit comments, or access the docket, please follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 22, 2014. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 17, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–30089 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0817; FRL–9919–30]

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/interim 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–2014–0817, 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?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's final/interim registration review decision for 4-CPA & salts (Case 2115), Acetaminophen (Case 7610), Allethrins (Case 0473), Clofentezine (Case 7602), Cyromazine (Case 7439), Fosthiazate (Case 7604), Hexythiazox (Case 7404), Lactofen (Case 7210), Macleaya Extract (Case 7024), Trinexapac-ethyl (Case 7228), and Quizalofop (Case 7215).

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 for 4-CPA & salts (Case 2115), Acetaminophen (Case 7610), Allethrins (Case 0473), Clofentezine (Case 7602), Cyromazine (Case 7439), Fosthiazate (Case 7604), Hexythiazox (Case 7404), Lactofen (Case 7210), Macleaya Extract (Case 7024), Trinexapac-ethyl (Case 7228), and Quizalofop (Case 7215) in light of the FIFRA standard for registration. For 4-CPA & salts (Case 2115), Allethrins (Case 0473). Clofentezine (Case 7602), Cyromazine (Case 7439), Fosthiazate (Case 7604), Hexythiazox (Case 7404), Lactofen (Case 7210), Macleaya Extract (Case 7024), Trinexapac-ethyl (Case 7228), and Quizalofop (Case 7215), the Final/Interim Decision documents in the docket describe the Agency's rationale for issuing a registration review final/interim decision for each of these pesticides.

In addition to the final/interim registration review decision document, the registration review docket for 4-CPA & salts, Acetaminophen, Clofentezine, Cyromazine, Fosthiazate, Hexythiazox, Lactofen, Macleaya Extract, Trinexapac-ethyl, and Quizalofop also includes other relevant documents related to the registration review of this case. The proposed final/interim registration review decisions were posted to the docket and the public was invited to submit any comments or new information.

REGISTRATION REVIEW FINAL AND INTERIM DECISIONS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone number, email address
4-CPA (Case 2115)	EPA–HQ–OPP–2014–0544	Miguel Zavala, 703–347–0504, *zavala.miguel@epa.gov.*
Acetaminophen (Case 7610)	EPA–HQ–OPP–2012–0145	Bonnie Adler, 703–308–8523, *adler.bonnie@epa.gov.*
Allethrins (Case 0473)	EPA–HQ–OPP–2010–0022	Marianne Mannix, 703–347–0275, *mannix.marianne@epa.gov.*
Clofentezine (Case 7602)	EPA–HQ–OPP–2006–0240	Wilhelmena Livingston, 703–308–8025, *livingston.wilhelmena@epa.gov.*
Cyromazine (Case 7439)	EPA HQ–OPP–2006–0108	James Parker, 703–306–0469, *parker.james@epa.gov.*
Fosthiazate (Case 7604)	EPA–HQ–OPP–2009–0267	James Parker, 703–306–0469, *parker.james@epa.gov.*
Hexythiazox (Case 7404)	EPA–HQ–OPP–2006–0114	Miguel Zavala, 703–347–0504, *zavala.miguel@epa.gov.*
Lactofen (Case 7210)	EPA–HQ–OPP–2005–0287	Kelly Ballard, 703–305–8126, *ballard.kelly@epa.gov.*
Macleaya Extract (Case 7024)	EPA–HQ–OPP–2011–0172	Susan Bartow, 703–603–0065, *bartow.susan@epa.gov.*
Trinexapac-ethyl (Case 7228)	EPA–HQ–OPP–2008–0657	Brittany Pruitt, 703–347–0289, *pruitt.brittany@epa.gov.*
Quizalofop (Case 7215)	EPA–HQ–OPP–2007–1089	Khue Nguyen, 703–347–0248, *nguyen.khue@epa.gov.*

EPA addresses the comments or information received during the 60-day comment period in the discussion for each pesticide listed in this document. During the 60-day comment period, no public comments were received for fosthiazate or 4–CPA, while cyromazine, hexythiazox and macleaya extract each received a single comment from the Center for Biological Diversity which did not affect the Agency's interim decisions.

4–CPA (Interim Decision). The registration review docket for 4–CPA (EPA–HQ–OPP–2014–0544) opened in a notice published in the **Federal Register** of September 24, 2014 (79 FR 57084) (FRL–9916–39). 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 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 FFDCA section 408(p) determination.

Acetaminophen (Final Registration Review Decision). Acetaminophen (also known as the active ingredient in Tylenol) is registered for use as a vertebrate pesticide to control the invasive brown tree snake in Guam. The snakes ingest baited mice, which are lethal to the snake. There are no registered food/feed uses for acetaminophen, and no tolerances have been established. The Agency conducted an ecological risk and endangered species assessment for acetaminophen, and concluded, based on the limited opportunities for non-target species to be exposed, that there are no risks of concern for native, non-target organisms associated with the pesticidal use of acetaminophen. Furthermore, the Agency made a ''no effects'' determination for all federally listed species and a ''no adverse modification of critical habitat'' determination. A human health risk assessment was not conducted due to acetaminophen's well-studied pharmaceutical use and the extremely limited opportunities for human exposure from its pesticidal use on Guam. In addition, EPA recently has determined that acetaminophen is exempt from requirements of the endocrine disruptor screening program. The Agency proposed in June of 2014 that risk mitigation measures were not needed, and several comments were received in support of that decision. This notice finalizes the Agency's registration review decision on acetaminophen.

Allethrins (Interim Decision). The registration review docket for the allethrin stereoisomers (EPA–HQ–OPP–20 1 0–0022) opened in a notice published in the **Federal Register** of March 30, 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 disrupter risk. Pending the outcome of this action, EPA is issuing an interim registration review decision for allethrins.

Clofentezine (Interim Decision). The registration review docket for clofentezine (EPA–HQ–OPP–2006–0240) opened in a notice published in the **Federal Register** of March 2007 (72 FR 14548) (FRL–8118–3). Clofentezine is an acaricide registered for use to control mites. It is a liquid formulation for use on almonds, apples, apricots, cherries, Christmas trees (except California) and Christmas tree plantations, grapes (except New York), nectarines, ornamentals (greenhouse and outdoor), peaches, pears, persimmons, and walnuts. There are currently no registered residential uses of clofentezine. The Agency conducted a human health risk assessment and did not identify any risks of concern. The ecological risk assessment determined that all outdoor uses of clofentezine can potentially lead to direct adverse effects to listed and non-listed birds. As birds serve as surrogates to reptiles and terrestrial-phase amphibians, risk to these taxa is also a possibility. The use of clofentezine is not expected to pose a risk to foraging (adult) bees; however, there is a potential for risk to non-listed and listed terrestrial arthropods because of adverse effects to reproduction and development. To address this uncertainty, the Agency is requiring a chronic honey bee larval toxicity test to determine any reproductive effects to pollinators. This interim decision does not cover the EDSP component of the clofentezine registration review case. Additionally, the ecological risk assessment for clofentezine did not come to a conclusion of ''no effect'' to some listed species. Therefore, consultation with the Fish and Wildlife Service on the potential risk of clofentezine to some listed species will be necessary. The Agency's final registration review decision for clofentezine will occur after an EDSP FFDCA Section 408(p) determination, and after the result of the Section 7 Endangered Species consultation with the U.S. Fish and Wildlife Service as well as an assessment on the non-target exposure to bees.

Cyromazine (Interim Decision). The registration review docket for cyromazine (EPA–HQ–OPP–2006–0108) opened in a notice published in the **Federal Register** of March 28, 2007 (72 FR 14548) (FRL–8118–3). Cyromazine is a triazine which acts as an insect growth regulator. Cyromazine is registered for use on several agricultural crops such as beans, peppers, and tomatoes; it is registered for use on indoor ornamentals, and to control flies in manure. There are no residential uses for cyromazine. EPA conducted a human health occupational risk assessment and did not identify any risks of concern. The ecological risk assessment identified potential risks to several taxa including birds, mammals, and bees. To mitigate potential ecological risks, the Agency will increase the application interval for cyromazine use on potatoes; add label language for the onion seed treatment use; add precautionary label language to reduce risk to bees; and, increase the minimum droplet size for aerial applications. These changes will reduce estimated risks. The Agency did not reach a conclusion of ''no effect'' to any listed species. Therefore, consultation with the Fish and Wildlife Service (FWS) on the potential risk of cyromazine to listed species will be necessary. Cyromazine has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the results of consultation under section 7 of the Endangered Species Act (ESA) (16 U.S.C. 1536) with the FWS and the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is issuing an interim registration review decision for cyromazine.

Fosthiazate (Interim Decision). The registration review docket for fosthiazate (EPA–HQ–OPP–2009–0267) opened in a notice published in the **Federal Register** of June 24, 2009 (74 FR 30077) (FRL–8422–4). Fosthiazate is an organophosphate nematicide for use only on tomatoes, via drip irrigation under plastic. There are no residential uses for fosthiazate. EPA conducted a human health dietary and occupational risk assessment for fosthiazate and did not identify any risks of concern. The ecological risk assessment identified potential risks to several taxa including birds, mammals, and soil-bound terrestrial invertebrates. To mitigate potential ecological risks, the agency will modify the application directions for fosthiazate to increase the volume of water required for application. The Agency did not not reach a conclusion of ''no effect'' to listed species. Therefore, consultation with FWS on the potential risk of fosthiazate to listed species will be necessary. Fosthiazate has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the results of consultation under ESA section 7 with FWS and the evaluation of potential endocrine disruptor risk. The EPA is issuing an interim registration review decision for fosthiazate.

Hexythiazox (Interim Decision). The registration review docket for hexythiazox (EPA–HQ–OPP–2006–0114) opened in a notice published in the **Federal Register** of February 2, 2007 (72 FR 5050) (FRL–8113–1). Hexythiazox is an acaricide that acts primarily as a mite growth inhibitor/ovicide and is used to control mites. It is registered for use on a variety of agricultural crops, turf, and various residential plants. The Agency conducted a human health risk assessment and did not identify any risks of concern. The ecological risk assessment identified potential risks of concern to non-target terrestrial invertebrates (*e.g.,* bees) and chronic risk to fish due to lack of data. The Agency is therefore requiring an honey bee larval toxicity study to determine any reproductive effects to pollinators. While chronic risk to fish and non-target invertebrates is uncertain due to data gaps, the potential risks are expected to be low as hexythiazox is applied only once per year at a low rate and is not highly persistent in the environment. The risk assessment for hexythiazox did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with FWS and the National Marine Fisheries Service (NMFS) (the Services) on the potential risk of hexythiazox to listed species will be necessary. Hexythiazox has not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent on the result of consultation under ESA section 7 with the Services,the evaluation of potential endocrine disruptor risk, as well as an assessment on the non-target exposure to bees. Pending the outcome of these actions, EPA is planning to issue a registration review decision for hexythiazox.

Lactofen (Interim Decision). The registration review docket for lactofen (EPA–HQ–OPP–2005–0287) opened in a notice published in the **Federal Register** of February 2, 2007 (72 FR 5050) (FRL–8113–1). Lactofen is a light dependent peroxidizing herbicide (LDPH) with uses on conifer seedlings, cotton, kenaf. peanuts, soybean, and with State-specific uses on fruiting vegetables, okra, and snap beans. There are no residential uses for lactofen. EPA conducted a human health occupational risk assessment and did not identify any risks of concern. The ecological risk assessment identified potential risks to several different taxa. However, due to the number of conservative assumptions included in the assessment, and additional use and usage information to help characterize potential risks, the

Agency is not proposing mitigation changes at this time. The risk assessment for lactofen did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with FWS on the potential risk of lactofen to listed species will be necessary. Lactofen has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the results of consultation under ESA section 7 with FWS and the evaluation of potential endocrine disrupter risk. Pending the outcome of these actions, EPA is issuing an interim registration review decision for lactofen.

Macleaya Extract (Interim Decision). The registration review docket for macleaya extract (EPA–HQ–OPP–2011–0172) opened in March 2011. Macleaya extract is a plant extract of *Macleaya cordata,* and is registered for use only in enclosed commercial greenhouses, as an ornamental plant fungicide for the control of foliar fungal diseases. There are no registered food uses of macleaya extract. EPA completed a qualitative draft human health risk assessment for all macleaya extract 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 and designated critical habitat. Macleaya extract 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. The EPA is issuing an interim registration review decision for macleaya extract.

Trinexapac-ethyl (Interim Decision) The registration review docket for trinexapac-ethyl (EPA–HQ–OPP–2008–0657) opened in a notice published in the **Federal Register** of September 15, 2008 (73 FR 53244) (FRL–8381–3). Trinexapac-ethyl is a plant growth regulator registered for use by homeowners and professional applicators to manage growth of barley, grasses grown for seed, oats, sugarcane, triticale, turf grass, and wheat. Turf grass uses include athletic fields and parks, commercial and residential lawns, golf courses, and sod farms. It is also registered for application around flower beds, ornamental trees, and shrubs. EPA conducted a human health risk assessment and did not identify any risks of concern. In addition, EPA conducted an ecological risk assessment. Based on low risk estimates, and the conservative nature of the risk assessment, the Agency does not anticipate ecological risks of concern for assessed taxa from currently registered uses of trinexapac-ethyl. The Agency is not proposing mitigation changes at this time. However, the Agency is proposing that labels clarify the single-maximum application rate for liquid turf end-use products. Two comments were received for the trinexapac-ethyl proposed interim decision on the detail of the risk assessment. These comments did not change the interim decision. The risk assessment for trinexapac-ethyl did not come to a conclusion of ''no effect'' to listed species. Therefore, consultation with the Services on the potential risk of trinexapac-ethyl to listed species will be necessary. Trinexapac-ethyl has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the result of consultation under ESA section 7 with FWS and the evaluation of potential endocrine disrupter risk. Pending the outcome of these actions, EPA is issuing an interim registration review decision for trinexapac-ethyl.

Quizalofop (Interim Decision). The registration review docket for quizalofop (EPA–HQ–OPP–2007–1089) opened in 2007. Quizalofop is a selective post-emergence herbicide and appears as two different isomers: quizalofop-ethyl and quizalofop-p-ethyl. Quizalofop-ethyl is a 50/50 racemic mixture of R- and S-enantiomers and there are no active pesticide registrations of this isomer. Quizalofop-p-ethyl is the purified R-enantiomer and the pesticidally active isomer. For the Agency's purposes, both isomers will be referred to collectively as quizalofop. Quizalofop is registered to control annual and perennial grasses in various crops including Chinese cabbage, cotton, garlic, grains, legumes, mint, pineapple, soybean, sugar beets, and sunflower. Quizalofop is also used in non-agricultural settings, such as cottonwood and poplar plantations, fencerows, roadsides, and other uncultivated areas. EPA conducted a risk assessment for both human health and ecological risk. No risks of concern were identified in the human health risk assessment. The ecological risk assessment indicated potential risks to amphibians, freshwater fish, non-target monocots, and terrestrial mammals. The Agency will modify the application directions for quizalofop to reduce spray drift risk to non-target organisms. The screening-level endangered species assessment did not come to a conclusion of ''no effect'' to listed species, therefore, consultation with FWS on the potential risk of quizalofop to listed species will be necessary. Quizalofop has not been evaluated under EDSP. Therefore, the Agency's final registration review decision is dependent on the result of consultation under ESA section 7 with FWS and the evaluation of potential endocrine disruptor risk. Pending the outcome of these actions, EPA is issuing an interim registration review decision for quizalofop.

Pursuant to 40 CFR 155.58(c), the registration review case docket for 4-CPA (Case 2115), Allethrins (Case 0473), Clofentezine (Case 7602), Cyromazine (Case 7439), Fosthiazate (Case 7604), Hexythiazox (Case 7404), Lactofen (Case 7210), Macleaya Extract (Case 7024), Trinexapac-ethyl (Case 7228), and Quizalofop (Case 7215) will remain open until all actions required in the final/interim 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.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 16, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–30214 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0814; FRL–9919–24]

Registration Review Proposed Interim Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed interim registration review decisions and opens a 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 February 23, 2015.

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) 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 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. 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 following Table, 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 number, email address
Acetic acid and sodium diacetate (Case 4001).	EPA–HQ–OPP–2008–0016	Carolyn Schroeder, (703) 308–2961, *schroeder.carolyn@epa.gov.*
Fosetyl-Al (Case 0646)	EPA–HQ–OPP–2007–0379	Ricardo Jones, (703) 347–0493, *jones.ricardo@epa.gov.*
Picaridin (Case 7433)	EPA HQ–OPP–2014–0341	Ricardo Jones, (703) 347–0493, *jones.ricardo@epa.gov.*
Sodium fluoride (NaF) (Case 3132)	EPA–HQ–OPP–2014–0655	SanYvette Williams, (703) 305–7702, *williams.sanyvette@epa.gov.*
Yellow mustard seed (Case 7618) and Sulfonic acid salts (Case 7619).	EPA–HQ–OPP–2014–0762	Roy Johnson, (703) 347–0492, *johnson.roy@epa.gov.*

1. *Acetic acid and sodium diacetate.* Acetic acid (Proposed Interim Decision). The registration review docket for acetic acid and sodium diacetate (EPA–HQ–OPP–2008–0016) opened in March 2008. Acetic acid and sodium diacetate are two different active ingredients: Sodium diacetate is a salt of acetic acid. Acetic acid is used as a preservative for post harvest stored grains and hay intended for livestock feed. Additionally, it is also applied as a non-selective herbicide for control of broadleaf weeds and weed grasses. Sodium diacetate is a fungicide and bactericide registered to control molds and bacteria. It is applied to hay to prevent spoilage and to silage as an aid in fermentation. EPA published the Final Work Plan in August 2008. The Agency determined that previous human health assessments for acetic acid and sodium diacetate were sufficient for registration review and no human health risks of concern were identified. The Agency completed a comprehensive ecological risk assessment for the nonselective herbicide use of acetic acid, including an endangered species assessment, and a qualitative ecological risk assessment for sodium diacetate. The Agency concludes a ''no effect'' determination for acetic acid used as a nonselective herbicide and all currently registered uses of sodium diacetate for all non-target organisms; no mitigation measures regarding ecological effects are included in the proposed interim decision. The risk assessments and proposed interim decision for acetic acid and sodium diacetate are currently available in the docket for public comment. Acetic acid and sodium diacetate have not been evaluated under the EDSP. Therefore, the Agency's final registration review decision is dependent upon the results of the evaluation of acetic acid and sodium diacetate as potential endocrine disruptor risks. Pending the outcome of

this action, EPA is planning to issue an interim registration review decision for acetic acid and sodium diacetate.

2. *Fosetyl-Al.* Fosetyl-Al (Proposed Interim Decision). The registration review docket for fosetyl-Al (EPA–HQ–OPP–2007–0379) opened in December 2007. Fosetyl-Al is systemic fungicide used to control diseases caused by oomycetes such as downy mildews. It is registered for use on agricultural crops as well as residential and commercial areas. EPA published draft human health and ecological risk assessments in March 2014. There are no human health risks of concern. The Agency also completed an ecological risk assessment. The results of this quantitative risk assessment indicates that the currently labeled rates of fosestyl-Al pose a potential for adverse effects, *i.e.,* risk, to non-target terrestrial animals, including insects, birds, reptiles, terrestrial-phase amphibians and mammals. In addition, applications may impact sensitive species of dicotyledenous plants (dicots) in terrestrial habitats. In order to address potential ecological risks, the Agency is proposing changes to product labels which incorporate certain risk mitigation measures meant to reduce these risks. These measures include restricting aerial application of fosetyl-Al for certain uses, reducing the total number of applications that can be made annually for certain uses, and clarifying labels to better define how fosetyl-Al may be applied. The Agency completed a screening-level endangered species assessment and made a ''no effects'' determination for the following taxa: Fish, aquatic-phase amphibians, aquatic invertebrates, aquatic plants, and monocot plants. For all other species the effects determinations are uncertain. Fosetyl-Al has not been evaluated under the Endocrine Disruptor Screening Program (EDSP) nor has it completed the Endangered Species Act (ESA) Section 7 consultation with the U.S. Fish and Wildlife Service (Service). Therefore, the Agency's final registration review decision is dependent upon the result of the evaluation of potential endocrine disruptor risk and consultation with the Service for endangered species. Pending the outcome of these actions, EPA is planning to issue an interim registration review decision for fosetyl-Al.

3. *Picaridin.* (Combined Work Plan, Preliminary Risk Assessments, and Proposed Interim Decision). The registration review docket for Picaridin (EPA HQ–OPP–2014–0341) is opening for public comment on a Combined Preliminary Work Plan, Final Work Plan, Preliminary Risk Assessments, and Proposed Interim Decision for registration review. Due to the lack of need for additional data to support this decision, the Agency is also issuing Preliminary Ecological and Human Health Risk Assessments for picaridin and opening them for public comment. Picaridin is a broad-spectrum insect repellant registered for use against biting flies, chiggers, fleas, mosquitos and ticks. Picaridin is labelled for use on human skin, clothing, footwear, and on horses. EPA has completed comprehensive draft human health and ecological risk assessments, including a screening-level endangered species assessment, for all picaridin uses. For human health, only residential exposure was assessed, and the Agency has not identified any risk concerns associated with the registered uses of picaridin. Due to its use on human skin and clothing, exposure to terrestrial non-target organisms and plants is expected to be inconsequential. Based on the lack of potential exposure and nontoxic effects, the ecological risk assessment has made a ''no effect'' determination for all federally listed species and ''no habitat modification'' of any designated critical habitat for listed species. Picaridin 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, the Agency is planning to issue an interim registration review decision for picaridin.

4. *Sodium fluoride.* (Combined Preliminary Work Plan and Proposed Interim Decision). The registration review docket for sodium fluoride (EPA–HQ–OPP–2014–0655) is opening for public comment on a Combined Preliminary Work Plan and Proposed Interim Decision. Sodium fluoride is registered for use as a wood preservative to protect the groundline portion of existing wooden utility poles. It is formulated as an impregnated pole wrap material. This use is not expected to result in direct or indirect dietary (food) or drinking water exposure. Occupational and residential exposure is minimal by the dermal and inhalation routes so no assessment is needed. Based on the lack of potential exposure and nontoxic effects to fish, aquatic invertebrates and birds, the ecological risk assessment has made a ''no effect'' determination for Federally listed species and designated critical habitat. Sodium fluoride 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 a combined preliminary work plan and interim registration review decision for sodium fluoride.

5. *Yellow mustard seed/Sulfonic acid salts* (Combined Preliminary Work Plan and Proposed Interim Decision). The registration review docket for yellow mustard seed and sulfonic acid salts is opening for public comment on a Combined Preliminary Work Plan and Proposed Interim Decision. The registration review docket for Yellow Mustard Seed/Sulfonic Acid Salts (YMS/SAS) is opening for public comment on a combined Work Plan, Draft Risk Assessments, and a Proposed Interim Registration Review Decision. This product is a rodenticide for the control of the Richardson's ground squirrel and Wyoming ground squirrel. YMS/SAS is applied by injection under pressure as a foam into burrows inhabited by the pest species in rangeland, ornamental plantings, orchards, golf courses, parks, nurseries, and non-crop rights-of-way. No risks of concern were identified. YMS/SAS have not been evaluated under the EDSP, nor has an endangered species assessment been conducted. The Agency's final registration review decision is dependent upon the results of both assessments. Pending the outcome of those assessments, EPA is issuing an interim registration review decision for YMS/SAS.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was 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 the Federal Insecticide, Fungicide, and Rodenticide Act (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 interim 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 interim 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.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 17, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–30088 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0807; FRL–9919–06]

Registration Review; Draft Human Health and Ecological Risk Assessments; 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 reviews of bentazon, daminozide, and d-limonene 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 for each case, the Agency has drafted a human health and ecological risk assessment for all uses of the previously listed pesticide chemicals. The ecological risk assessment includes or will include an assessment of risks to listed species, and the human health and ecological risk assessments includes or will include a determination of endocrine disrupter effects for the case. After reviewing comments received during the public comment period, EPA may issue revised risk assessments, explain any changes to the draft risk assessments, and respond to comments. The Agency also will request public input on any proposed risk mitigation measures 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 February 23, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0807, 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

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 pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration reviews of bentazon, daminozide, and d-limonene 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) (7 U.S.C. 136a(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

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for bentazon, daminozide, and d-limonene to ensure that they continue to satisfy the FIFRA standard for registration—that is, these pesticides can still be used without unreasonable adverse effects on human health or the environment. Information on the type of pesticide, target pests and uses sites can be found below for each case. EPA has completed draft human health and/or ecological risk assessments for all bentazon, daminozide, and d-limonene uses.

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 bentazon, daminozide, and d-limonene. 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, as needed, issue revised risk assessments, explain any changes to the draft risk assessments, and respond to the comments. In the **Federal Register** notice announcing the availability of the revised risk assessments, if a revised risk assessment indicates risks of concern, the Agency may provide a comment period for the public to submit suggestions for mitigating the risks identified in the revised risk assessment before developing a proposed registration review decision. Alternatively, the Agency may seek public comment on a proposed registration review decision without revising the risk assessments for any given chemical. 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.

REGISTRATION REVIEW DRAFT RISK ASSESSMENTS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone number, and email address
Bentazon (Case 0182)	EPA–HQ–OPP–2010–0117	Carolyn Schroeder, (703) 308–2961, *schroeder.carolyn@epa.gov.*
Daminozide (Case 0032)	EPA–HQ–OPP–2009–0242	Margaret Hathaway, (703) 305–5076, *hathaway.margaret@epa.gov.*
d-Limonene (Case 3083)	EPA HQ–OPP–2010–0673	Benjamin Askin, (703) 347–0503, *askin.benjamin@epa.gov.*

Bentazon. Bentazon is a benzothiadiazole herbicide registered to control post-emergent broadleaf weeds and sedges in numerous agricultural field crops, and around trees and vines in various fruit and nut crops. Bentazon is also registered for use to control weeds in residential and recreational lawns around ornamental plants. EPA has completed a comprehensive draft human health and ecological risk assessment for all bentazon uses.

Daminozide. Daminozide is a systemic growth regulator registered for use on ornamental plants grown in commercial or research greenhouses, shadehouses, and nurseries. If used in outdoor nursery areas, daminozide can only be applied to containerized ornamentals. EPA has completed a comprehensive draft human health and ecological risk assessment for all daminozide uses.

*d-Limonen*e. D-Limonene is an acaricide, herbicide, insecticide, and also acts as an insect repellent/feeding depressant and is used to control flying insects, flies, ants, cockroaches, mosquito larvae, fleas and ticks in terrestrial food and feed crops, as well as an non-food sites, indoor and outdoor residential sites, and aquatic sites. EPA has completed comprehensive draft human health and ecological risk assessments for d-limonene uses.

1. *Other related information.* Additional information on Bentazon, Daminozide, and d-Limonene is available on the Pesticide Registration Review Status Web page for these pesticides, *http://www.epa.gov/pesticides/chemicalsearch/.* Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *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: December 15, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–29882 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9920–96–OA]

Request for Nominations for Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations for Mobile Sources Technical Review Subcommittee (MSTRS).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Mobile Sources Technical Review Subcommittee (MSTRS). Vacancies are anticipated to be filled by October 2015. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

DATES: Nominations must be postmarked or emailed by February 4, 2015.

ADDRESSES: Submit nominations to: Elizabeth Etchells, Designated Federal Officer, Office of Transportation and Air Quality, U.S Environmental Protection Agency (6406A), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

You may also email nominations with subject line MSTRS2015 to *etchells.elizabeth@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Etchells, Designated Federal Officer, U.S. EPA; telephone: (202)343–9231; email: *etchells.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The MSTRS is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Pub. L. 92–463. The MSTRS provides the Clean Air Act Advisory Committee (CAAAC) with independent advice, counsel and recommendations on the scientific and technical aspects of programs related to mobile source air pollution and its control. Through its expert members from diverse stakeholder groups and from its various workgroups, the subcommittee reviews and addresses a wide range of developments, issues and research areas such as emissions modeling, emission standards and standard setting, air toxics, innovative and incentive-based transportation policies, onboard diagnostics, heavy-duty engines, diesel retrofit, fuel quality and greenhouse gases. The Subcommittee's Web site is at: *http://www.epa.gov/air/caaac/mobile_sources.html.*

Members are appointed by the EPA Administrator for three year terms with the possibility of reappointment to a second term. The MSTRS usually meets two times annually and the average workload for the members is approximately 5 to 10 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business for members who qualify.

EPA is seeking nominations from representatives of nonfederal interests such as:

- State and local government interests
- environmental advocacy groups
- community and/or environmental justice interests
- energy/fuel industry interests
- emissions control and parts manufacturers
- marine port interests
- transportation and supply chain shippers

EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

In selecting members, we will consider technical expertise, coverage of broad stakeholder perspectives, diversity and the needs of the subcommittee.

The following criteria will be used to evaluate nominees:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations);
- Experience working with producers of passenger cars, engines and trucks, engine and equipment manufacturing;
- Experience working with fuel or renewable fuel producers;
- Experience working with oil refiners, distributors and retailers of mobile source fuels;
- Experience working with clean energy producers;
- Experience working with agricultural producers (corn and other crop products), distillers, processors and shippers of biofuels;
- Experience working with emission control manufacturers, catalyst and filter manufacturers;
- Experience working for State and local environmental agencies or State Air Pollution Control Agencies;
- Experience working for environmental advocacy groups;
- Experience working for environmental and/or community groups;
- Experience working with supply chain logistics and goods movement;
- Experience working with marine port interests;
- Experience in working at the national level on local governments issues;
- Demonstrated experience with environmental and sustainability issues;
- Executive management level experience with membership in broad-based networks;
- Excellent interpersonal, oral and written communication and consensus-building skills;
- Ability to volunteer time to attend meetings two times a year, participate in teleconference and webinar meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. Interested candidates may self-nominate.

To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to three-year terms.

Dated: December 15, 2014.

Christopher Grundler,

Director, Office of Transportation and Air Quality.

[FR Doc. 2014–30229 Filed 12–23–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0812]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 OMB 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 OMB control number.

DATES: Written comments should be submitted on or before January 23, 2015. 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0812.

Title: Exemption from Payment of Regulatory Fees When Claiming Non-Profit Status.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit organizations and business or other for-profit organizations.

Number of Respondents and Responses: 19,169 respondents; 19,269 responses.

Estimated Time per Response: 30 minutes (0.5 hours).

Frequency of Response: Annual, on occasion and one-time reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection (IC) is contained in 47 U.S.C. 159.

Total Annual Burden: 9,635 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Licensees or regulatees concerned about disclosure of sensitive information in any submissions to the Commission may request confidential treatment pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission (FCC), in accordance with the Communications Act of 1934, as amended, is required to assess and collect regulatory fees from its licensees and regulatees in order to recover its costs incurred in conducting enforcement, policy and rulemaking, international and user information services.

The purposes for the requirements are to facilitate: (1) The statutory provision that non-profit entities be exempt from payment of regulatory fees; and (2) the FCC's ability to audit regulatory fee payment compliance.

In order to develop a *Schedule of Regulatory Fees,* the FCC must, as accurately as possible, estimate the number of fee payment entities and distribute the costs. These estimates must be adjusted to account for any licensees or regulatees that are exempt from payment of regulatory fees. The FCC, therefore, requires all licensees and regulatees that claim exemption as non-profit entities to provide one-time only documentation sufficient to establish their non-profit status. Further, the FCC is requesting that it be similarly notified if for any reason that status changes. The documentation necessary to provide to the Commission will likely take the form of an Internal Revenue Service (IRS) Determination Letter, a state charter indicating non-profit status, proof of church affiliation indicating tax exempt status, etc.

The FCC is requiring licensees or regulatees to maintain and to make available, upon request, for inspection such records they would normally keep in the course of doing business.

This will enable the FCC to conduct any audits deemed appropriate to determine whether fee payments were made correctly, and will help ensure compliance with the FCC fee exemption policies.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–30078 Filed 12–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0686 and 3060–0944]

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

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 Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. 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 OMB 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 OMB control number.

DATES: Written comments should be submitted on or before January 23, 2015. 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0686.

Title: International Section 214 Authorization Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25 and 1.1311.

Form Number: International Section 214—New Authorization; International Section 214 Authorization—Transfer of Control/Assignment; International Section 214—Special Temporary Authority and International Section 214—Foreign Carrier Affiliation Notification.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents and Responses: 495 respondents; 748 responses.

Estimated Time per Response: 0.50 hour to 15 hours.

Frequency of Response: On occasion reporting requirement, Quarterly reporting requirement, Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 1, 4(i), 4(j), 11, 201–205, 208, 211, 214, 219, 220, 303(r), 309, 310 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 208, 211, 214, 219, 220, 303(r), 309, 310 and 403.

Total Annual Burden: 3,286 hours.

Total Annual Cost: $755,400.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve a revision of OMB Control No. 3060–0686. The purpose of this revision is to obtain OMB approval of rules adopted in the Commission's Report and Order in IB Docket No. 12–299, FCC 14–48, adopted and released on August 22, 2014 (Report and Order). In the Report and Order, the Commission eliminated the effective competitive opportunities (ECO) test from sections 63.11(g)(2) and 63.18(k) of the Commission's rules, 47 CFR 63.11(g)(2), 63.18(k), which apply to applications filed under section 63.18, 47 CFR 63.18, for authority to provide U.S.-international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 214, and to foreign carrier affiliation notifications filed under section 63.11 of the Commission's rules, 47 CFR 63.11. The Commission is also making adjustments to the hour and cost burdens associated with other rules and requirements covered by this information collection.

The information will be used by the Commission staff in carrying out its duties under the Communications Act. The information collections are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are, or are affiliated with, foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience, and necessity. The information collections are also necessary to maintain effective oversight of U.S. international carriers generally.

If the collections are not conducted or are conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services, and the Commission will be unable to carry out its mandate under the Communications Act. In addition, without the information collections, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the WTO Basic Telecom Agreement because these collections are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

OMB Control Number: 3060–0944.

Title: Cable Landing License Act, 47 CFR 1.767; 1.768; Executive Order 10530.

Form Number: Submarine Cable Landing License Application.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents and Responses: 38 respondents; 94 responses.

Estimated Time per Response: 0.50 hour–17 hours.

Frequency of Response: On occasion reporting requirement, Quarterly reporting requirement, Recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in the Submarine Cable Landing License Act of 1921, 47 U.S.C. 34–39, Executive Order 10530, section 5(a), and the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155, 303(r), 309, 403.

Total Annual Burden: 421 hours.

Total Annual Cost: $88,505.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (Commission) is requesting that the Office of Management and Budget (OMB) approve a revision of OMB Control No. 3060–0944. The purpose of this revision is to obtain OMB approval of rules adopted in the Commission's Report and Order in IB Docket No. 12–299, FCC 14–48, adopted and released on August 22, 2014 (Report and Order). In the Report and Order, the Commission eliminated the effective competitive opportunities (ECO) test from sections 1.767(a)(8) and 1.768(g)(2) of the Commission's rules, 47 CFR 1.767(a)(8), 1.768(g)(2), which apply to cable landing license applications filed under the Submarine Cable Landing License Act of 1921, 47 U.S.C. 34–39, and section 1.767 of the Commission's rules, 47 CFR 1.767, and to foreign carrier affiliation notifications filed under section 1.768 of the Commission's rules, 47 CFR 1.768. The Commission is also making adjustments to the hour and cost burdens associated with other rules and requirements covered by this information collection.

The information will be used by the Commission staff in carrying out its duties under the Submarine Cable Landing License Act of 1921, 47 U.S.C. 34–39, Executive Order 10530, section 5(a), and the Communications Act of 1934, as amended. The information collections are necessary largely to determine whether and under what conditions the Commission should grant a license for proposed submarine cables landing in the United States, including applicants that are, or are affiliated with, foreign carriers in the destination market of the proposed submarine cable. Pursuant to Executive Order No. 10530, the Commission has been delegated the President's authority under the Cable Landing License Act to grant cable landing licenses, provided that the Commission must obtain the approval of the State Department and seek advice from other government agencies as appropriate. If the collection is not conducted or is conducted less frequently, applicants will not obtain the authorizations necessary to provide telecommunications services and facilities, and the Commission will be unable to carry out its mandate under the Cable Landing License Act and Executive Order 10530. In addition, without the collection, the United States would jeopardize its ability to fulfill the U.S. obligations as negotiated under the World Trade Organization (WTO) Basic Telecom Agreement because certain of these information collection requirements are imperative to detecting and deterring anticompetitive conduct. They are also necessary to preserve the Executive Branch agencies' and the Commission's ability to review foreign investments for national security, law enforcement, foreign policy, and trade concerns.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2014–30077 Filed 12–23–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE-IN); Notice of Charter Renewal

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of renewal of the FDIC Advisory Committee on Economic Inclusion.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (''FACA''), 5 U.S.C. App., and after consultation with the General Services Administration, the Chairman of the Federal Deposit Insurance Corporation has determined that renewal of the FDIC Advisory Committee on Economic Inclusion (''the Committee'') is in the public interest in connection with the performance of duties imposed upon the FDIC by law. The Committee has been a successful undertaking by the FDIC and has provided valuable feedback to the agency on important initiatives focused on expanding access to banking services for underserved populations. The Committee will continue to provide advice and recommendations on initiatives to expand access to banking services for underserved populations. The Committee will continue to review various issues that may include, but not be limited to, basic retail financial services such as low-cost, sustainable transaction accounts, savings accounts, small dollar lending, prepaid cards, money orders, remittances, and other services to promote asset accumulation and financial stability. The structure and responsibilities of the Committee are unchanged from when it was originally established in November 2006. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

Dated: December 18, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2014–30150 Filed 12–23–14; 8:45 am]

BILLING CODE 6714–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

[Docket No. FSOC–2014–0001]

Notice Seeking Comment on Asset Management Products and Activities

AGENCY: Financial Stability Oversight Council.

ACTION: Notice.

SUMMARY: Consistent with its responsibility to identify risks to the financial stability of the United States, the Financial Stability Oversight Council (Council) is issuing this notice seeking public comment on aspects of the asset management industry (Notice), in particular whether asset management products and activities may pose potential risks to the U.S. financial system in the areas of liquidity and redemptions, leverage, operational functions, and resolution, or in other areas. The Council is inviting public comment as part of its ongoing evaluation of industry-wide products and activities associated with the asset management industry.

DATES: Comments must be received no later than February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments on all aspects of this Notice. All submissions must refer to docket number FSOC–2014–0001.

Electronic Submission of Comments: Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://*

www.regulations.gov. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, provides for timely receipt, and enables the Council to make the comments available to the public. Comments submitted electronically through *http://www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Comments may be mailed to Financial Stability Oversight Council, Attn. Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

Public Inspection of Comments: Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions: In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Patrick Pinschmidt, Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of the Treasury, at (202) 622–2495; Lyndsay Huot, Senior Policy Advisor, Office of the Financial Stability Oversight Council, Department of the Treasury, at (202) 622–5874; or Eric Froman, Office of the General Counsel, Department of the Treasury, at (202) 622–1942.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) established the Council to identify risks to the financial stability of the United States, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. Consistent with those purposes, the Council continually monitors the financial marketplace to identify potential risks to U.S. financial stability.

The Council has been engaged in work over the past year to analyze risks associated with the asset management industry and whether any such risks could affect U.S. financial stability. The Council recognizes that asset management is an important component of the financial services industry and that there are meaningful differences within the asset management industry, with diverse investment strategies, corporate structures, regulatory regimes, and customers. To further the Council's work, in May 2014, the Deputies Committee of the Council hosted a public conference on the asset management industry and its activities, at which practitioners—including CEOs, treasurers, and risk officers—as well as academics and other stakeholders discussed a variety of topics related to the industry. The Council subsequently directed staff to undertake a more focused analysis of industry-wide products and activities to assess potential risks associated with the asset management industry. Based on that and other work, certain areas of interest have been highlighted by the Council as warranting further review and analysis.

The Council is now seeking public comment in order to understand whether and how certain asset management products and activities could pose potential risks to U.S. financial stability. Specifically, this Notice requests information about whether risks associated with liquidity and redemptions, leverage, operational functions, and resolution in the asset management industry could affect U.S. financial stability.[1] The Council also welcomes input on other areas associated with asset management products and activities that could affect U.S. financial stability.

The Council recognizes that investment risk is inherent in capital markets, representing a normal part of market functioning. The Council's focus on the asset management industry is directed at assessing whether asset management products or activities could create, amplify, or transmit risk more broadly in the financial system in ways that could affect U.S. financial stability. Financial stability risks may arise even where existing measures protect individual market participants (including particular asset managers, investment vehicles, and investors) because these measures may not fully take into account the effects of possible stress on other market participants, markets themselves, or the broader economy. Similarly, risks to financial stability might not flow from the actions of any one entity, but could arise collectively across market participants. Further, the Council notes that certain activities that do not pose risks to financial stability during normal times may do so during periods of financial market stress or stress at a particular firm.

A number of different types of entities subject to varying regulatory frameworks engage in asset management activities, including but not limited to registered investment advisers, banks and thrifts, insurance companies, commodity trading advisors, and commodity pool operators.[2] These entities provide a variety of asset management products, herein referred to as ''investment vehicles,'' such as separately-managed accounts (SMAs) and ''pooled investment vehicles.''[3] Pooled investment vehicles include investment companies registered under the Investment Company Act of 1940 (Investment Company Act) (registered funds), private funds (including hedge funds), bank collective investment trusts, and commodity pools. The Council is interested in obtaining information on potential risks to the U.S. financial system that may arise from the asset management activities of any entities or investment vehicles.

The Council recognizes that the Securities and Exchange Commission (SEC) is undertaking several initiatives that would apply to investment companies and investment advisers regulated by the SEC and may address some of the risks described in this Notice.[4] While the SEC's initiatives are not specifically focused on financial stability, the Council intends to consider the impact these initiatives may have in reducing any risks to U.S. financial stability associated with the asset management industry.

The Council's analytical process will depend importantly on the existence

[1] In this regard, the Council is acting consistent with the purposes described in section 112(a)(1) of the Dodd-Frank Act, *see, e.g.,* 12 U.S.C. 5322(a)(1)(A) (''identify risks to the financial stability of the United States that could arise from the . . . ongoing activities, of . . . nonbank financial companies''), as well as pursuant to specific duties of the Council. *See, e.g.,* 12 U.S.C. 5322(a)(2)(C) (requiring the Council to ''monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States'').

[2] Many of these entities provide a range of financial services. For the purposes of this Notice, the Council is interested in the asset management activities of these entities and any risks that they could present to the broader financial markets. As discussed in Sections III and IV, the Council is also exploring the existence of potential risks that could arise from interconnections with affiliated companies.

[3] SMAs are accounts managed by a registered investment adviser, in which the client, which could be a pension fund, sovereign wealth fund, or other entity or individual, retains direct and sole ownership of the assets under management and which are typically held at an independent custodian on behalf of the client. For purposes of this Notice, SMAs are included in the term ''investment vehicles.''

[4] *See* Unified Agenda of Regulatory and Deregulatory Actions (Fall 2014) (initiatives relating to derivatives use by investment companies, fund liquidity management programs, transition plans for investment advisers, stress testing for large asset managers and large investment companies, and information reporting by SEC-regulated entities).

and availability of high-quality data and information, which are essential to the ability of the Council to carry out its statutory purposes. The Council notes that information is available in varying degrees about different asset management products and activities. A core component of the Council's review is an evaluation of the extent to which sufficient data are available to monitor and assess potential risks in the asset management industry and whether there are areas where additional data and information would be helpful to the Council, as well as to market participants.

The Council has not made any determination regarding the existence or nature of any potential risks to U.S. financial stability discussed in this Notice. Throughout this Notice, the Council asks questions regarding areas of potential risk in the asset management industry and will consider the input received in each case in evaluating whether any of these areas might present potential risks to U.S. financial stability. In the event the Council's analysis identifies risks to U.S. financial stability, the Council will consider potential responses.

I. Liquidity and Redemptions

Liquidity risk generally refers to the risk that an investor will not be able to buy or sell an asset in a timely manner without significantly affecting the asset's price.[5] Most financial assets expose investors to some degree of liquidity risk, whether they invest directly in the assets or indirectly through a pooled investment vehicle. While the Council welcomes broader input on liquidity risks that may be associated with investment vehicles generally, the Council is focused on exploring whether investments through pooled investment vehicles that provide redemption rights, as well as their management of liquidity risks and redemptions, could potentially influence investor behavior in a way that could affect U.S. financial stability differently than direct investment.

In particular, the Council is interested in exploring the ways in which investors in some pooled investment vehicles could have greater incentives to redeem than if they were to sell a direct investment in the financial assets comprising the vehicle's portfolio. Investors in pooled investment vehicles that offer near-term access to redemptions could face increased redemption incentives, especially during periods of financial market stress, because the costs associated with redemptions are shared and, as a result, partially borne by remaining shareholders.[6] As a result, investors could have an incentive to redeem before other investors to avoid sharing the costs associated with other investors' redemptions. This incentive to redeem from pooled investment vehicles may be magnified for vehicles invested in less-liquid asset classes. Managers of such vehicles might need to sell assets at a discount to meet redemptions, particularly during times of stress, and the cost would have to be borne by remaining investors in the vehicle. If a manager of such a vehicle were to sell more-liquid portfolio assets in order to minimize the price impact of early redemptions, liquidity risk could be concentrated on investors redeeming later. As a result, investor perceptions of how liquidity and redemption risk are managed in pooled investment vehicles could potentially heighten redemption incentives and increase the likelihood of asset sales.

The Council seeks input on whether these issues affect redemption behavior from pooled investment vehicles in a way that could ultimately affect financial stability. Specifically, the Council is interested in whether such redemption incentives could make fire sales more likely in the asset markets in which the pooled investment vehicles invest, as well as in correlated or broader asset markets.

The Council also is interested in redemption incentives associated with pooled investment vehicles in which lenders reinvest cash collateral received to secure a loan of securities.[7] Such a pooled investment vehicle may experience redemptions triggered by terminations of securities loans, and the related requirement to repay cash collateral. The Council seeks input on whether such redemptions might increase during times of financial stress and whether this may result in the potential broader market impacts discussed above.

The Council understands that pooled investment vehicles may employ a variety of techniques to manage liquidity risks.[8] For example, some investment vehicles maintain a portion of assets in cash or highly-liquid assets to meet redemption requests and may modify their portfolio composition based on market conditions to manage redemption requests.[9] Many exchange-traded funds (ETFs) redeem in kind as a matter of course, and those that allow authorized participants (APs) to redeem in cash frequently impose transaction or liquidity fees that force the AP to bear the liquidity-related costs of its own redemption.[10] Hedge fund investors often are subject to an initial ''lock up'' period and thereafter may only redeem their interests on a periodic basis. Insurance separate accounts may serve as funding vehicles for life insurance policies or annuity contracts that provide deferred benefit payments and redemption disincentives (such as early-surrender charges and loss of economic and tax benefits).[11] Some private funds may have additional redemption restrictions that may be imposed during times of stress, such as size limits on redemptions (partial ''gates'') or temporary suspension of redemptions. The Council is interested in the effectiveness of these measures during

[5] The term ''liquidity risk'' is used herein to describe market liquidity risk, as opposed to funding liquidity risk. Funding liquidity risk, which involves the risk that an entity is unable to meet its cash or other obligations in a timely manner, is a means through which leverage may contribute to financial market stress, a subject discussed in Section II.

[6] In contrast, because SMAs impose the full cost of asset sales on the redeeming investor, SMAs are unlikely to create the same incentives for the investor to redeem.

[7] Securities lending is a transaction involving the temporary transfer of a security by one party (the lender) to another (the borrower) in exchange for cash or non-cash collateral. Securities loans generally are collateralized by an amount exceeding the value of the securities loaned, and the required collateral amount is marked-to-market daily. Most securities lending in the United States is secured by cash collateral, and lenders generally reinvest cash collateral to earn additional income.

[8] Regulatory requirements regarding liquidity in pooled investment vehicles and redemption practices are also critical to understanding risks and risk management. The Council is aware of existing regulations in this area and, while the discussion notes some relevant regulatory constraints, this Notice is not intended to provide a comprehensive discussion of regulatory requirements.

[9] In addition, SEC guidance provides that mutual funds and exchange-traded funds (ETFs) generally may not invest more than 15 percent of their net assets in ''illiquid securities.'' Illiquid securities are defined as securities that cannot be sold or disposed of in the ordinary course of business within seven days at approximately the price at which the fund has valued the investment. Revisions of Guidelines to Form N–1A, Investment Company Act Release No. 18612 (Mar. 12, 1992) 57 FR 9,828 (Mar. 20, 1992).

[10] ETF shares are traded on an exchange. Investors (other than APs as discussed below) do not transact in shares directly with the ETF, but instead buy and sell shares in the secondary market (and do not have a right of redemption). ETF shares may only be redeemed by (or issued to) certain broker-dealers or other institutions that have contractual arrangements to act as APs for the ETF. ETF shares are issued and redeemed in block-size aggregations (*e.g.,* 50,000 shares) referred to as creation units, typically in an in-kind transaction in which an AP delivers or receives a specified portfolio of securities, other assets, and cash. Whereas mutual funds typically redeem their shares in cash but reserve the right to redeem in kind, ETFs typically redeem in kind but reserve the right to redeem in cash.

[11] Insurance separate accounts often are registered under the Investment Company Act as unit investment trusts.

periods of overall market stress, as well as the potential impact on broader financial markets from the exercise of such measures.

The Council is also interested in the extent to which asset managers may not always manage investment vehicles in a way that prevents or fully mitigates the risks to the investment vehicle and to the broader financial system. For example, investor preferences regarding an investment vehicle's investment strategy and portfolio allocation may generally encourage the vehicle to remain fully, or almost fully, invested in particular asset classes and limit the vehicle's holdings of cash or highly-liquid assets. Similarly, competitive pressures to increase returns and outperform benchmarks may provide disincentives to holding cash or highly-liquid assets. The Council also seeks input on the degree to which the risk management practices of asset managers sufficiently account for the possibility of simultaneous asset sales by multiple investors or the likelihood of significantly larger price effects in times of stress.

Questions for Public Comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to liquidity and redemption risks in the asset management industry that could potentially present financial stability concerns.[12]

1. How does the structure of a pooled investment vehicle, including the nature of the redemption rights provided by the vehicle and the ways that such vehicles manage liquidity risk, affect investors' incentives to redeem? Do particular types of pooled investment vehicles, based on their structure or the nature of their redemption management practices, raise distinct liquidity and redemption concerns (*e.g.,* registered funds, private funds, or ETFs)?

2. To what extent do pooled investment vehicles holding particular asset classes pose greater liquidity and redemption risks than others, particularly during periods of market stress? To what extent does the growth in recent years in assets in pooled investment vehicles dedicated to less liquid asset classes (such as high-yield bonds or leveraged loans) affect any such risks?

3. To what extent might incentives to redeem shares in a pooled investment vehicle or other features of pooled investment vehicles make fire sales of the portfolio assets, or of correlated assets, more likely than if the portfolio assets were held directly by investors?

4. To what extent does the potential for terminations of securities loans that would trigger redemptions from cash collateral reinvestment vehicles or other asset sales pose any distinct financial stability concerns? To what extent do investment vehicles reinvest cash collateral in assets with longer maturities relative to the lender's obligation to repay the collateral, which may increase liquidity risk? How much discretion do lending agents have with respect to cash collateral reinvestment? To what extent do lending agents reinvest cash collateral in vehicles managed by the same firm that manages the investment vehicle lending the securities?

5. How do asset managers determine whether the assets of a pooled investment vehicle are sufficiently liquid to meet redemptions? What liquidity and redemption risk management practices do different types of pooled investment vehicles employ both in normal and stressed markets, and what factors or metrics do asset managers consider (*e.g.,* the possibility that multiple vehicles may face significant redemptions at the same time, availability of back-up lines of credit) in managing liquidity risk?

6. To what extent could any redemption or liquidity risk management practices (*e.g.,* discretionary redemption gates in private funds) used in isolation or combination amplify risks?

7. To what extent can competitive pressures create incentives to alter portfolio allocation in ways that may be inconsistent with best risk management practices or do not take into account risks to the investment vehicle or the broader financial markets?

8. To the extent that liquidity and redemption practices in pooled investment vehicles managed by asset managers present any risks to U.S. financial stability (*e.g.,* increased risks of fire sales or other spillovers), how could the risks to financial stability be mitigated?

9. What additional information would help regulators or market participants better assess liquidity and redemption risks associated with various investment vehicles, including information regarding the liquidity profile of an asset class or of a particular type of investment vehicle?

II. Leverage

Leverage is created when an investor (*e.g.,* investment vehicle) enters into transactions resulting in investment exposures that exceed equity capital. Leverage can be financial (*i.e.,* borrowings reflected on the balance sheet), or synthetic (*i.e.,* exposures embedded in the structure of financial instruments such as derivatives). While the use of leverage with appropriate controls and risk management can be a useful component of an investment strategy, high degrees of leverage can present risks to investment vehicles by magnifying the impact of asset price or rate movements.

In this Notice, the Council is interested in exploring ways in which the use of leverage by investment vehicles could increase the potential for forced asset sales, or expose lenders or other counterparties to losses or unanticipated market risks, and the extent to which these risks may have implications for U.S. financial stability. For example, during periods of financial market stress, declines in asset prices could lead to collateral or margin calls, requiring leveraged investors to meet those demands through asset sales that could in turn result in further declines in asset prices. Additionally, the exposures created by leverage establish interconnections between borrowers and lenders—and possible further interconnections between lenders and other market participants—through which financial stress could be transmitted to the broader financial system.

The Council understands that the use of leverage by investment vehicles can vary significantly depending on the type of investment vehicle and type of investment strategy. In particular, the Council is interested in the extent and full variety of ways that private funds and SMAs obtain leverage.[13] While the Council recognizes that registered funds are generally limited in their use of leverage, it is nonetheless also interested in the nature and extent of leverage obtained by registered funds, including through the use of derivatives.

Leverage can be obtained by investment vehicles through a variety of secured financings, including margin credit, repurchase agreements (repos), prime brokerage financing

[12] There may also be interconnections between liquidity and leverage risks, or between liquidity risk and activities such as securities lending. For example, leveraged investment vehicles whose posted collateral assets decline in value may need to sell other assets to obtain the liquidity required to meet margin calls. With respect to securities lending, if cash collateral is invested in assets with longer maturities than the loan terms, lenders could face liquidity risks that result in lender losses. *See* Section II for a discussion of risks associated with leverage.

[13] While an SMA represents a direct investment by a client and investment management agreements may specify limitations relating to leverage, the Council is interested in whether, and how, the use of leverage by investors is affected when the investors' assets are managed through SMAs.

arrangements, securities lending transactions, or bank loans. Investment vehicles may also obtain leverage through derivative transactions. Entering into numerous derivative contracts or having large directional exposures through derivatives may significantly increase the complexity of risk management and the associated level of risk within the investment vehicle. Some private fund strategies rely extensively on the use of derivatives to obtain leverage. Registered funds may also use derivatives, subject to certain limitations.[14]

The Council recognizes that derivatives are also used by investment vehicles for purposes other than obtaining leverage, such as establishing hedges against market risks. The Council is interested in better understanding whether and how derivatives are used by various types of investment vehicles to obtain leveraged market exposures, as opposed to hedging risks relating to other investment positions.

U.S. regulations restrict leverage for certain types of investment vehicles. For example, the Investment Company Act constrains the amount of leverage that may be employed by mutual funds and other registered funds. Mutual funds may only incur indebtedness through bank borrowings with 300 percent asset coverage.[15] Registered funds may engage in repos, but must segregate liquid assets equal to the repurchase price of the securities. Registered funds may also use derivatives, for hedging purposes or to enhance returns, subject generally to a requirement to segregate liquid assets for their derivatives transactions.[16]

By contrast, private funds, including hedge funds and other unregistered funds, are not subject to the leverage restrictions imposed on funds registered under the Investment Company Act. In addition, certain publicly offered products other than registered funds, such as exchange-traded commodity pools, may provide investors with more highly leveraged investment exposures than would be available through registered funds. SMAs may also employ leverage.[17] Because regulators currently do not collect data on SMA portfolio positions on a systematic, industry-wide basis, information regarding the types of assets held in these accounts, their counterparty and other exposures, and amounts of leverage are not routinely available to regulators for assessment and monitoring purposes.

Questions for Public Comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to the risks of leverage in the asset management industry that could potentially present financial stability concerns.

1. How do different types of investment vehicles obtain and use leverage? What types of investment strategies and clients employ the greatest amount of leverage?

2. To what extent and under what circumstances could the use of leverage by investment vehicles, including margin credit, repos, other secured financings, and derivatives transactions, increase the likelihood of forced selling in stressed markets? To what extent could these risks be increased if an investment vehicle also offers near-term access to redemptions?

3. How do asset managers evaluate the amount of leverage that would be appropriate for an investment strategy, particularly in stressed market conditions? To what extent do asset managers evaluate the potential interconnectedness of counterparties? How do lenders or counterparties manage their exposures to investment vehicles?

4. What risk management practices, including, for example, widely-used tools and models or hedging strategies, are used to monitor and manage leverage risks of different types of investment vehicles? How do risk management practices in investment vehicles differ based on the form of leverage employed or type of investment vehicle? How do asset managers evaluate the risk of potential margin calls or similar contingent exposures when calculating or managing leverage levels? How are leverage risks managed within SMAs, and to what extent are such risks managed differently than for pooled investment vehicles?

5. Could any risk management practices concerning the use of leverage by investment vehicles, including hedging strategies, amplify risks?

6. To what extent could the termination of securities borrowing transactions in stressed market conditions force securities lenders to unwind cash collateral reinvestment positions? To what extent are securities lenders exposed to significant risk of loss?

7. To the extent that any risks associated with leverage in investment vehicles present risks to U.S. financial stability, how could the risks to financial stability be mitigated?

8. What are the best metrics for assessing the degree and risks of leverage in investment vehicles? What additional data or information would be useful to help regulators and market participants better monitor risks arising from the use of leverage by investment vehicles?

III. Operational Risk

Operational risk refers to the risk arising from inadequate or failed processes or systems, human errors or misconduct, or adverse external events. Examples include business disruptions or failures in systems and processes, either within a firm or at external service providers relied upon by a firm. Like other financial services firms, asset management firms rely significantly on both affiliated and unaffiliated providers of technology, data, and other operational services, and they are exposed to operational risk in many different forms. While the Council is interested in any areas of operational risk within the asset management industry that could present risks to U.S. financial stability, the Council is particularly interested in two areas: (1) Risks that may be associated with the transfer of significant levels of client accounts or assets from one asset manager to another; and (2) risks that may arise when multiple asset managers

[14] A number of regulations apply to derivatives transactions. For example, exchange-traded and centrally-cleared derivatives are subject to specific margin rules and clearinghouse protocols to support payment of potential counterparty obligations. For certain swap and security-based swap transactions, rules (or proposed rules will) require mandatory clearing and execution on trading platforms, collection of margin, and data reporting and recordkeeping. Over-the-counter derivatives that are not centrally cleared may be more difficult to value, transfer, or liquidate, potentially exposing contracting parties to greater counterparty credit risk.

[15] Closed-end registered funds are also subject to the 300 percent asset coverage requirement on their indebtedness. Closed-end funds may borrow both from banks and nonbank lenders, and closed-end funds are permitted to issue preferred stock subject to a 200 percent asset coverage requirement.

[16] The amount of liquid assets to be segregated varies depending on the transaction and would generally either be the full obligation due at the end of the contract or, with respect to certain cash-settled derivatives, the daily mark-to-market liability, if any, of the fund under the derivative. In certain cases, registered funds may cover their derivatives transactions by holding a fully offsetting position. The SEC issued a concept release on the use of derivatives by registered funds in August 2011. *See* Use of Derivatives by Registered Investment Companies Under the Investment Company Act of 1940, Investment Company Act Release No. 29776 (Aug. 31, 2011). Among other things, the concept release requested comment on the benefits and shortcomings of the asset segregation approach and potential alternatives.

[17] Because SMAs are not collective investment vehicles, they are not subject to restrictions on leverage under the Investment Company Act. The investment management agreement between the client and asset manager, however, may specify limitations relating to the use of leverage.

rely on one or a limited number of third parties to provide important services, including, for example, asset pricing and valuation or portfolio risk management.[18]

The Council is interested in exploring any potential risks associated with the transfer of a significant level of client accounts or assets from an asset manager and whether there could be obstacles to this process, particularly during a period of financial market stress, that could pose risks to U.S. financial stability.[19] Such transfers could occur on a large scale for various reasons, including damage to a manager's reputation that leads clients to select other managers or a manager's voluntary or involuntary exit from the business. Although clients have routinely replaced asset managers without significant impact in non-stressed situations, there could be delays or other obstacles associated with transferring client accounts to other managers or transitioning client assets to another custodian, particularly in a stressed scenario.

The Council seeks information on market practices, processes, and systems employed by asset managers and other market participants (*e.g.,* custodians and transfer agents); these entities' operational capabilities to transition client accounts and assets between managers; and the effectiveness of such market practices, processes, and systems in times of idiosyncratic or market stress.

The Council is also interested in exploring risks associated with reliance on service providers—either affiliated entities or independent third-party providers—for important components of the asset management business. Asset managers may use service providers for key functions or may be providers of such services to other asset managers or financial institutions. For example, asset managers often use affiliated entities or third parties to provide custody, brokerage, asset pricing and valuation, portfolio risk management, and administrative services (*e.g.,* recordkeeping, accounting, and transfer agency services).

The Council seeks to understand the potential risk across the asset management industry if multiple asset managers rely exclusively on one or a small number of providers for certain services and the resulting risk if one of these providers either ceases operations or renders the services in a flawed manner (*e.g.,* providing asset pricing and valuation or portfolio risk models that contain errors in methodology). Careful consideration of how asset managers use service providers, particularly the degree of reliance by multiple asset managers on a concentrated number of service providers, is important in understanding whether there may be risks to certain markets or asset classes if asset managers were to suffer a disruption in service.

More generally, strong operational controls and risk management are important within the asset management industry in areas such as accounting and recordkeeping, trading operations (including algorithmic trading), data security, custody, and pricing and valuation. Asset management firms, like other financial services firms, rely significantly on technological systems, including processing, recordkeeping, and communications systems, which are vulnerable to a number of operational risks ranging from normal system disruptions to targeted cyber-attacks. Asset managers that operate globally may be confronted with additional operational risks. The Council is interested in understanding whether any operational risks to asset managers could have broader implications for U.S. financial stability.

Questions for Public Comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to operational risks in the asset management industry that could potentially present financial stability concerns.

1. What are the most significant operational risks associated with the asset management industry and how might they pose risks to U.S. financial stability? What practices do asset managers employ to manage operational risks (*e.g.,* due diligence, contingency planning)?

2. What are the risks associated with transferring client accounts or assets from one manager to another and how do these risks vary depending on the nature of the client, the asset types owned by the client (*e.g.,* derivatives), or how the asset type is traded or cleared? For certain asset classes or strategies, are the number of asset managers offering a comparable strategy so concentrated that finding a substitute would present challenges? How rapidly could investment management accounts be transferred, including during a time of financial market stress?

3. What market practices, processes, and systems need to be in place to smoothly effect transfers of client accounts or assets by asset managers and/or custodians? What differences exist in information technology systems, processes, or data formats that could pose operational risk, particularly when markets are stressed? Are there specific risks related to foreign clients, foreign custodians, foreign assets, or the use of offshore back-office operations?

4. While asset liquidation is not required for, and is not typically associated with, the transfer of client accounts, are there any significant risks of asset liquidations in the event of a large-scale transfer of accounts or assets from an asset manager?

5. To what extent do asset managers rely on affiliated or unaffiliated service providers in a concentrated or exclusive manner for any key functions (*e.g.,* asset pricing and valuation, portfolio risk modeling platforms, order management and trade processing, trading, securities lending agent services, and custodial services)? What would be the impact if one or more service providers ceased provision of the service, whether due to financial or operational reasons, or provide the service in a seriously flawed manner? To what extent do potential risks depend upon the type of service provided, whether the provider is affiliated with the asset manager, or whether the service provider is non-U.S. based? What due diligence do firms perform on systems used for asset pricing and valuation and portfolio risk management?

6. What operational interconnections exist between the asset manager and the investment vehicles it manages, among investment vehicles managed by the same asset manager or affiliated managers, or between the asset manager and its affiliates? For example, to what extent do asset management firms rely on shared personnel, technology, or services among affiliates? Could any of those interconnections result in operational risk transmission among affiliated investment vehicles or asset managers in the event of a failure and resolution of an affiliate? Do market practices ensure that operational interconnections are sufficiently documented to allow for an orderly continuation of an investment vehicle's operations if the asset manager or affiliated or independent third-party service providers were to declare bankruptcy?

7. What are best practices employed by asset managers to assess and mitigate

[18] While Section IV focuses on the financial implications of the failure or closure of an entity in the asset management industry, the Council is also interested in any unique operational risks that may arise if an asset manager, its affiliates, or investment vehicles were to fail or be liquidated.

[19] The transfer of client accounts or assets refers to the transfer of SMAs. Outflows of assets from a manager in the form of redemptions from pooled investment vehicles are discussed in Section I.

the operational risks associated with asset management activities performed by service providers, whether affiliated with the asset manager or not, and how common are these practices across the industry? What agreements or other legal assurances are in place to ensure the continued provision of services? What are asset managers' contingency plans to deal with potential failures of service providers, and how might these plans be impacted by market stress?

8. To the extent that any operational risks in the asset management industry present risks to U.S. financial stability, how could these risks to financial stability be mitigated?

IV. Resolution

The Council is interested in the extent to which the failure or closure of an entity could have an adverse impact on financial markets or the economy.[20] While previous sections of this Notice explore aspects of potential risk that could be associated with material stress at an asset manager or investment vehicle, this section explores whether there are specific financial interconnections that could present risks if an asset manager, investment vehicle, or affiliate were to become insolvent, declare bankruptcy, or announce an intent to close and liquidate.[21] The Council seeks information on whether there are any financial interconnections, such as transactions, investments, or loans across affiliated investment vehicles, between investment vehicles and an asset manager, or with third parties, that could complicate resolution in the asset management industry, particularly during a period of financial market stress. The Council also is interested in understanding the potential implications of the failure or liquidation of a private fund for financial stability.[22] The Council also seeks information on whether there are any actions that market participants or counterparties to contracts could take that would adversely affect a resolution or give rise to liquidity concerns. The Council would like to explore whether there are issues that could make the resolution or liquidation of an asset manager or an investment vehicle with international operations more complex. For example, the Council seeks input on the extent to which access to assets in foreign jurisdictions or shared services located abroad may be impaired, or proceedings may be subject to multiple jurisdictions with potentially conflicting resolution regimes. In addition, the Council seeks information on practices or planning undertaken by asset managers to help mitigate the potential for disruption to clients or markets more generally in the event of a failure of a firm or liquidation of an investment vehicle.

The Council recognizes that asset management firms and investment vehicles have closed without presenting a threat to financial stability. The Council notes that an investment vehicle has a separate legal structure from the asset manager, any parent company, or any affiliated investment vehicles under the same manager. In addition, the assets of the investment vehicle are not legally available to the asset manager, its parent company, or affiliates for the purpose of satisfying their financial obligations or those of affiliated investment vehicles. Nonetheless, the Council would like to explore any potential issues that may arise in a resolution or liquidation of an entity in the asset management industry, particularly in circumstances of financial market stress, and if an entity were to have a high degree of complexity and multi-jurisdictional operations.

Questions for Public Comment

The Council requests comment on the questions below. The Council also welcomes input on other areas relating to resolution and liquidation in the asset management industry that could potentially present financial stability concerns.

1. What financial interconnections exist between an asset manager and the investment vehicles it manages, between an asset manager and its affiliates, or among investment vehicles managed by the same or affiliated asset managers that could pose obstacles to an orderly resolution? To what extent could such interconnections result in the transmission of risk among asset managers and affiliated investment vehicles? Do market practices ensure that any financial interconnections are sufficiently documented to allow for an orderly continuation of operations if an asset manager, investment vehicle (*e.g.,* private fund), or affiliate were to become insolvent, declare bankruptcy, or announce an intent to close?

2. Could the failure of an asset manager or an affiliate provide counterparties with the option to accelerate, terminate, or net derivative or other types of contracts of affiliates or investment vehicles that have not entered insolvency?

3. In what ways, if any, could the potential risks associated with liquidity and redemption or leverage discussed in Sections I and II, respectively, impact the resolution of an asset manager or investment vehicle in times of financial stress?

4. Are there interconnections that exist between asset managers and other financial market participants that in times of financial stress could transmit risks? For example, are there risks that securities lenders indemnified against borrower default by an asset manager lending agent may terminate their loans if the asset manager were to fail?[23] If so, could those terminations have disruptive consequences if counterparties face an unexpected requirement to return borrowed securities upon early loan terminations?

5. For asset managers, investment vehicles, or affiliates that operate internationally, in what ways could cross-border resolution complicate an orderly insolvency or resolution in one or more jurisdictions? Do contracts with service providers, such as custodians or prime brokers, allow for assets to be custodied, or subcustodied, at offshore entities, and what are the implications for resolution?

6. What contingency planning do asset managers undertake to help mitigate risks to clients associated with firm-specific or market-wide stress?

7. To the extent that resolution and liquidation in the asset management industry present risks to U.S. financial stability, how could the risks to financial stability be mitigated?

8. What data currently are available or should be collected to monitor activities that may affect a resolution?

V. Conclusion

The Council invites comment on all of the questions set forth in this Notice and welcomes input on other issues that

[20] For the purposes of this Notice, resolution refers to the commencement of proceedings in bankruptcy or, if bankruptcy is not appropriate, other proceedings or processes for the resolution, reorganization or liquidation of a legal entity.

[21] A pooled investment vehicle is owned by its investors, who are entitled to distribution of the vehicle's net assets if the vehicle were to be closed and liquidated.

[22] As discussed in Section II, leverage can present risks to investment vehicles, and the use of leverage by some private funds has raised concerns in the past. For example, margin calls and liquidity constraints were a prominent reason for the near-failure of Long-Term Capital Portfolio LP and the other funds managed by Long-Term Capital Management in 1998, which led a consortium of commercial financial institutions to recapitalize these funds to avoid potential financial instability. *See* ''Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management,'' Report of the President's Working Group on Financial Markets (April 1999).

[23] Securities lending agents often indemnify lenders against borrower default, and under indemnification agreements must cover the shortfall between the value of the securities on loan and the value of the collateral pledged by the borrower (but typically not losses resulting from cash collateral reinvestment).

commenters believe are relevant to the Council's understanding of risks to U.S. financial stability, if any, posed by asset management products and activities. The Council recognizes the areas of risk highlighted in this Notice may be interrelated and welcomes views on whether the interrelation of any of the risks described above or any other risks might present financial stability concerns. The Council will consider all comments as part of its evaluation of potential risks to U.S. financial stability.

Dated: December 18, 2014.

David G. Clunie,

Executive Secretary, Department of the Treasury.

[FR Doc. 2014–30255 Filed 12–23–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (DHHS) is hereby giving notice that a meeting of the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will take place via conference call. This call will be open to the public. Individuals who want to make public comments should send their request to *cfsac@hhs.gov,* by January 7, 2015.

DATES: The CFSAC conference call will be held on Tuesday, January 13, 2015, from 1:00 p.m. until 3:00 p.m. (ET).

ADDRESSES: The meeting will be conducted via conference call.

FOR FURTHER INFORMATION CONTACT: Barbara F. James, Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, Office on Women's Health, 200 Independence Avenue SW., Room 728F.3, Washington, DC 20201. Phone: 202–690–7650; Fax: 202–401–4005; Email: *cfsac@hhs.gov.*

SUPPLEMENTARY INFORMATION: The CFSAC is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The purpose of the CFSAC is to provide advice and recommendations to the Secretary of Health and Human Services (HHS), through the Assistant Secretary for Health (ASH), on issues related to myalgic encephalomyelitis/chronic fatigue syndrome (ME/CFS). The issues can include factors affecting access and care for persons with ME/CFS; the science and definition of ME/CFS; and broader public health, clinical, research, and educational issues related to ME/CFS.

The agenda for this meeting and call-in information will be posted on the CFSAC Web site *http://www.hhs.gov/advcomcfs/index.html.*

Thirty minutes of oral public comment will be scheduled for this conference call. Individuals will have three minutes to present their comments. Priority will be given to individuals who have not provided public comment within the previous year. We are unable to place international calls for public comments.

Only testimony submitted for public comment and received by January 7, 2015, will be part of the official meeting record and posted to the CFSAC Web site. Materials submitted should not include sensitive personal information, such as social security number, birthdates, driver's license number, state identification or foreign country equivalent, passport number, financial account number, or credit or debit card number. If you wish to remain anonymous the document must specify this.

The Committee welcomes input from anyone who wishes to provide public comment on any topic being addressed by the Committee. However, the Committee is particularly interested in receiving comments during the upcoming meeting on the draft report from the National Institute of Health's Pathways to Myalgic Encephalomyelitis/Chronic Fatigue Syndrome meeting.

Dated: December 18, 2014.

Barbara F. James,

Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, U.S. Department of Health and Human Services.

[FR Doc. 2014–30237 Filed 12–23–14; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–0278]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Hospital Ambulatory Medical Care Survey (NHAMCS) [OMB No. 0920–0278, Expiration Date 12/31/2014]–Revision–National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''utilization of health care'' in the United States. The National Hospital Ambulatory Medical Care Survey (NHAMCS) has been conducted annually since 1992. The purpose of NHAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United

States. Ambulatory services are rendered in a wide variety of settings, including physicians' offices and hospital outpatient and emergency departments, and ambulatory surgery centers.

The target universe of the NHAMCS is in-person visits made to outpatient departments (OPDs), emergency departments (EDs), and ambulatory surgery locations (ASLs) of non-Federal, short-stay hospitals (hospitals with an average length of stay of less than 30 days) or those whose specialty is general (medical or surgical) or children's general.

The objective of this revision is to make slight modifications to survey questions.

Users of NHAMCS data include, but are not limited to, congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners. There are no costs to the respondents other than their time.

The total estimated annualized burden hours are 4,412.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Hospital Chief Executive Officer	Hospital Induction (NHAMCS–101)	458	1	90/60
Ancillary Service Executive	Ambulatory Unit Induction (NHAMCS–101U)	1,750	1	15/60
Physician/Registered Nurse/Medical Record Clerk.	ED Patient Record form	33	100	7/60
Physician/Registered Nurse/Medical Record Clerk.	OPD Patient Record form	23	200	14/60
Physician/Registered Nurse/Medical Record Clerk.	ASC Patient Record Form	23	100	7/60
Medical Record Clerk	Pulling and re-filing Patient Records (ED, OPD, and ASC).	696	133	1/60
Ancillary Service Executive—Reabstraction	Reabstraction Telephone Call	72	1	5/60
Medical Record Clerk—Reabstraction	Pulling and re-filing Patient Records (ED, OPD, and AS).	72	10	1/60

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. 2014–30083 Filed 12–23–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10142]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *January 23, 2015.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* We require that Medicare Advantage organizations and Prescription Drug Plans complete the Bid Pricing Tool (BPT) as part of the annual bidding process. During this process, organizations prepare their proposed actuarial bid pricing for the upcoming contract year and submit them to us for review and approval. The purpose of the BPT is to collect the actuarial pricing information for each plan. The BPT calculates the plan's bid, enrollee premiums, and payment rates. We publish beneficiary premium information using a variety of formats (*www.medicare.gov,* the Medicare & You handbook, Summary of Benefits marketing information) for the purpose of beneficiary education and enrollment. *Form Number:* CMS–10142 (OMB control number 0938–0944); *Frequency:* Yearly; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Rachel Shevland at 410–786–3026).

Dated: December 18, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–30026 Filed 12–23–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–1557]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (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.

DATES: Comments must be received by *February 23, 2015.*

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–1557 Survey Report Form for Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations

Under the Paperwork Reduction Act (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. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection. *Title of Information Collection:* Survey Report Form for Clinical Laboratory Improvement Amendments (CLIA) and Supporting Regulations. *Use:* The form is used to report surveyor findings during a CLIA survey. For each type of survey conducted (*i.e.,* initial certification, recertification, validation, complaint, addition/deletion of specialty/subspecialty, transfusion fatality investigation, or revisit inspections) the Survey Report Form incorporates the requirements specified in the CLIA regulations. *Form Number:* CMS–1557 (OMB control number: 0938–0544). *Frequency:* Biennially. *Affected Public:* Business or other for-profit, not-for-profit institutions, State, Local or Tribal Governments and Federal Government. *Number of Respondents:* 19,051. *Total Annual Responses:* 9,526. *Total Annual Hours:* 4,763. (For policy questions regarding this collection contact Kathleen Todd at 410–786–3385).

Dated: December 18, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–30027 Filed 12–23–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1461]

Rare Pediatric Disease Priority Review Vouchers; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the notice of availability (NOA) that appeared in the **Federal Register** of November 17, 2014. In the NOA, FDA requested comments on the Agency's implementation of the Rare Pediatric Disease Priority Review Vouchers Program. This action will allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the NOA published November 17, 2014 (79 FR 68451). Submit either electronic or written comments by February 16, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communications, Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or Office of Orphan Products Development, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5295, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office that will be processing your requests. 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: Henry Startzman III, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5295, Silver Spring, MD 20993–0002, 301–796–8660.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 17, 2014, FDA published a NOA with a 60-day comment period to request comments on FDA's implementation of the Rare Pediatric Disease Priority Review Vouchers Draft Guidance. Comments on the draft guidance will inform FDA's drafting of its final guidance for this program.

The Agency has recognized a discrepancy between the 90-day comment period included in the draft guidance and the 60-day comment period written in the November 17, 2014, NOA. Thus, it is publishing this NOA to extend the comment period cited in the previous NOA by 30 days.

The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying drafting of the final guidance on these important issues.

II. Request for 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.*

Dated: *December 18, 2014.*

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30154 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 23, 2015.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0363. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002 *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Feed Directive—21 CFR 558 (OMB Control Number 0910–0363)—(Extension)

With the passage of the Animal Drug Availability Act of 1996 (Public Law 104–250), Congress enacted legislation establishing a new class of restricted feed use drugs, VFD drugs, which may be distributed without involving State pharmacy laws. Although controls on the distribution and use of VFD drugs are similar to those for prescription drugs regulated under section 503(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(f)), the implementing VFD regulation (21 CFR 558.6) was tailored to the unique circumstances relating to the distribution of medicated feeds. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute such feed, and records must be maintained of the distribution and feeding (under the professional supervision of a licensed veterinarian) of all medicated feeds containing VFD drugs. The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

On December 12, 2013, FDA published a proposed rule in the **Federal Register** (78 FR 75515), intended to improve the efficiency of FDA's VFD program. The provisions included in the proposed rule were based on stakeholder input received in response to solicitations for public comment, including an advance notice of proposed rulemaking on March 29, 2010 (75 FR 15387), and draft text of proposed amendments to the current VFD regulations on April 13, 2012 (77 FR 22247).

In the **Federal Register** of September 25, 2014 (79 FR 57558), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but it did not respond to any of the four collection of information topics solicited in the notice and therefore is not discussed in this document. At the same time, since publication of the 60-day notice, the burden for this information collection has been revised to reflect an update in the number of veterinarians, producers, and distributors, as well as updated cost burden information.

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

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
558.6(d)(1)(i) through (d)(1)(iii): A distributor must notify FDA prior to the first time it distributes a VFD drug.	300	1	300	.25 (15 minutes)	75
558.6(d)(1)(iv): A distributor must notify FDA within 30 days of any change in ownership, business name, or business address.	20	1	20	.25 (15 minutes)	5
514.1(b)(9): Sponsor submits 3 copies of VFD with new drug application.	1	1	1	3	3
Total					83

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

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
558.6(c)(1) through (c)(4): Filing of VFD copies by veterinarians and producers [2].	13,050	114.9	1,500,000	.0167 (1 minute)	25,050
558.6(e)(1) through (e)(4): Filing of VFD copies by distributors only [3].	1,376	545.1	750,000	.0167 (1 minute)	12,525
Total	14,426		2,250,000		37,575

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] The same recordkeeping requirement for distributors is listed in two separate sections of the codified; therefore, we have listed distributors separately (in reference to 558.6(e)(1) through (e)(4)) in order to avoid double counting their recordkeeping requirement.
[3] Distributors may receive an acknowledgement letter in lieu of a VFD when consigning VFD feed to another distributor (please see table 3.). Such letters, like VFDs, are also subject to a 2-year record retention requirement. Thus, the recordkeeping burden for acknowledgement letters is included as a subset of the VFD recordkeeping burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE [1]

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
558.6(a)(3) through (a)(5): Veterinarian issues VFD.	3,050	246	750,000	0.125 (7 minutes)	93,750
558.6(d)(2): Acknowledgement letter generation [2]	[2] 1,000	5	5,000	0.125 (7 minutes)	625
Total					94,375

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] 1,000 VFD distributors (of the 1,376 total distributors) multiplied by 5 disclosures per distributor equals 5,000 annual acknowledgement letters, multiplied by 0.125 hours equals 625 hours annually.

The estimate of time required for record preparation and maintenance is based on Agency communication with industry and Agency records and experience.

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30157 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2104]

Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection of Ebola Zaire Virus; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of two Emergency Use Authorizations (EUAs) (the Authorizations) for two in vitro diagnostic devices for detection of the Ebola Zaire virus. FDA is issuing these Authorizations under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as requested by the Centers for Disease Control and Prevention (CDC). The Authorizations contain, among other things, conditions on the emergency use of the authorized in vitro diagnostic devices. The Authorizations follow the September 22, 2006, determination by then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security. On the basis of such determination, the Secretary of Health and Human Services (HHS) declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Ebola virus subject to the terms of any authorization issued under the FD&C Act. The Authorizations, which include an explanation of the reasons for issuance, are reprinted in this document.

DATES: The Authorizations are effective as of October 10, 2014.

ADDRESSES: Submit written requests for single copies of the EUAs to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorizations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorizations.

FOR FURTHER INFORMATION CONTACT: Luciana Borio, Assistant Commissioner for Counterterrorism Policy, Office of Counterterrorism and Emerging Threats, and Acting Deputy Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help assure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces of attack with a biological, chemical, radiological, or nuclear agent or agents; (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security under section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), or 515 of the FD&C Act (21 U.S.C. 355, 360(k), and 360e) or section 351 of the PHS Act (42 U.S.C. 262). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the CDC (to the extent feasible and appropriate given the applicable circumstances), FDA [1] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified

[1] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; and (4) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act. Because the statute is self-executing, regulations or guidance are not required for FDA to implement the EUA authority.

II. EUA Requests for In Vitro Diagnostic Devices for Detection of the Ebola Zaire Virus

On September 22, 2006, then-Secretary of Homeland Security, Michael Chertoff, determined that the Ebola virus presents a material threat against the U.S. population sufficient to affect national security.[2] On August 5, 2014, under section 564(b)(1) of the FD&C Act, and on the basis of such determination, the Secretary of HHS declared that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under section 564 of the FD&C Act. Notice of the declaration of the Secretary was published in the **Federal Register** on August 12, 2014 (79 FR 47141). On October 8, 2014, CDC submitted complete requests for, and on October 10, 2014, FDA issued, an EUA for the CDC Ebola Virus VP40 Real-time RT–PCR Assay and an EUA for the CDC Ebola Virus NP Real-time RT–PCR Assay, subject to the terms of these authorizations.

[2] Under section 564(b)(1) of the FD&C Act, the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat under section 319F–2 of the PHS Act sufficient to affect national security or the health and security of U.S. citizens living abroad (section 564(b)(1)(D) of the FD&C Act).

III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the Internet at *http://www.regulations.gov.*

IV. The Authorizations

Having concluded that the criteria for issuance of the Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of two CDC in vitro diagnostic devices for detection of the Ebola Zaire virus subject to the terms of the Authorizations. The Authorizations in their entirety (not including the authorized versions of the fact sheets and other written materials) follow and provide explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring, MD 20993

October 10, 2014

Thomas R. Frieden, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Rd, MS D-14
Atlanta, GA 30333

Dear Dr. Frieden:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the Centers for Disease Control and Prevention (CDC) Ebola Virus NP Real-time RT-PCR Assay for the presumptive detection of Ebola Zaire virus on a specified instrument in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors, by qualified laboratories designated by CDC, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[2]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the CDC Ebola Virus NP Real-time RT-PCR Assay (as described in the Scope of Authorization section of this letter (Section II)) in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors (as described in the Scope of Authorization section of this letter (Section II)) for the presumptive detection of Ebola Zaire virus by qualified laboratories designated by CDC, subject to the terms of this authorization.

[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).
[2] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus*. 79 Fed. Reg. 47141 (August 12, 2014).

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the CDC Ebola Virus NP Real-time RT-PCR Assay for the presumptive detection of Ebola Zaire virus in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola Zaire virus can cause Ebola, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the CDC Ebola Virus NP Real-time RT-PCR Assay, when used with the specified instrument, may be effective in diagnosing Ebola Zaire virus, and that the known and potential benefits of the CDC Ebola Virus NP Real-time RT-PCR Assay, when used with the specified instrument for diagnosing Ebola Zaire virus infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the CDC Ebola Virus NP Real-time RT-PCR Assay for diagnosing Ebola Zaire virus.[3]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay by qualified laboratories designated by CDC for the presumptive detection of Ebola Zaire virus in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors.

The Authorized CDC Ebola Virus NP Real-time RT-PCR Assay:

The CDC Ebola Virus NP Real-time RT-PCR Assay is a real-time reverse transcriptase PCR (rRT-PCR) for the *in vitro* qualitative detection of Ebola Zaire virus in whole blood, serum, and plasma specimens from individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors. The CDC Ebola Virus NP Real-time RT-PCR Assay can also be used with urine specimens when tested in conjunction with a patient-matched whole blood, serum, or plasma specimen. The test procedure consists of nucleic acid extraction using only the MagMax Pathogen RNA/DNA kit and the Dynal Bead Retriever followed by rRT-PCR on only the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument.

The CDC Ebola Virus NP Real-time RT-PCR Assay consists of two primer/probe sets: NP and RP (Rnase P). RNA is extracted from whole blood collected with EDTA as the anticoagulant, plasma, serum, or urine using only the MagMax Pathogen RNA/DNA kit on the Dynal Bead Retriever, not provided with the assay, prior to running on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument. The resulting purified RNA is analyzed only on the

[3] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument using provided primer/probe sets and required reagents with appropriate controls in place.

The CDC Ebola Virus NP Real-time RT-PCR Assay includes the following assay controls:

- EBOV NP rRT-PCR Positive Control – Used as a control for PCR reagent function.
- NTC – A known negative template control (sterile, nuclease-free water) added during rRT-PCR reaction set-up. Used as a control for PCR reagent function and cross-contamination.
- HSC – A known negative extraction control (human A549 cells) that is **extracted concurrently** with the test samples and included as a sample during rRT-PCR set-up. Should be negative for NP, but positive for RP. Used as a control to demonstrate successful extraction and as a control for cross-contamination.
- RP – All clinical samples should be tested for human RNAse P gene (using the RP primer and probe set included in the EBOV NP rRT-PCR kit) to control for specimen quality and extraction.

The above described CDC Ebola Virus NP Real-time RT-PCR Assay, when labeled consistently with the labeling authorized by FDA entitled "Ebola Virus NP Real-Time RT-PCR Assay" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by CDC in consultation with FDA, is authorized to be distributed to and used by qualified laboratories designated by CDC under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described CDC Ebola Virus NP Real-time RT-PCR Assay is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care professionals and patients:

- **Fact Sheet for Health Care Providers: Interpreting CDC Ebola Virus NP Real-Time RT-PCR (EBOV NP rRT-PCR) Assay Results**

- **Fact Sheet for Patients: Understanding Results from the CDC Ebola Virus NP Real-Time RT-PCR (EBOV NP rRT-PCR) Assay**

As described in Section IV below, CDC is also authorized to make available additional information relating to the emergency use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay in the specified population, when used for presumptive detection of Ebola Zaire virus, outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized CDC Ebola Virus NP Real-time RT-PCR Assay may be effective in the diagnosis of Ebola Zaire virus infection pursuant to section 564(c)(2)(A) of the Act. The FDA has reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, and concludes that the authorized CDC Ebola Virus NP Real-time RT-PCR Assay, when used to diagnose Ebola Zaire virus infection in the specified population, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the CDC Ebola Virus NP Real-time RT-PCR Assay described above is authorized to diagnose Ebola Zaire virus infection in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the CDC Ebola Virus NP Real-time RT-PCR Assay during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the CDC Ebola Virus NP Real-time RT-PCR Assay.
- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Centers for Disease Control and Prevention (CDC)

A. CDC will distribute the authorized CDC Ebola Virus NP Real-time RT-PCR Assay with the authorized labeling, as may be revised by CDC in consultation with FDA, only to qualified laboratories designated by CDC.

B. CDC will provide to qualified laboratories designated by CDC the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Health Care Providers and the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Patients.

C. CDC will make available on its website the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Health Care Providers and the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Patients.

D. CDC will inform qualified laboratories designated by CDC and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. CDC will ensure that qualified laboratories designated by CDC using the authorized CDC Ebola Virus NP Real-time RT-PCR Assay have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

F. CDC will track adverse events and report to FDA under 21 CFR Part 803.

G. Through a process of inventory control, CDC will maintain records of device usage.

H. CDC will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which CDC becomes aware.

I. CDC is authorized to make available additional information relating to the emergency use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

J. CDC may request changes to the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Health Care Providers or the authorized CDC Ebola Virus NP Real-time RT-PCR Assay Fact Sheet for Patients. Such requests will be made by CDC in consultation with FDA.

Qualified Laboratories Designated by CDC

K. Qualified laboratories designated by CDC will include with reports of the results of the CDC Ebola Virus NP Real-time RT-PCR Assay the authorized Fact Sheet for Health Care Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

L. Qualified laboratories designated by CDC will perform the CDC Ebola Virus NP Real-time RT-PCR Assay only on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument.

M. Qualified laboratories designated by CDC will have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

Page 6 – Dr. Frieden, Centers for Disease Control and Prevention

N. Qualified laboratories designated by CDC will collect information on the performance of the assay, and report to CDC any suspected occurrence of false positive or false negative results of which they become aware.

O. All laboratory personnel using the assay should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit.

CDC and Qualified Laboratories Designated by CDC

P. CDC and qualified laboratories designated by CDC will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

Q. All advertising and promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

R. All advertising and promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an Emergency Use Authorization for use by qualified laboratories designated by CDC;
- This test has been authorized only for the detection of Ebola Zaire virus and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola Zaire virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay may represent or suggest that this test is safe or effective for the diagnosis of Ebola Zaire virus.

The emergency use of the authorized CDC Ebola Virus NP Real-time RT-PCR Assay as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration
Silver Spring MD 20993

October 10, 2014

Thomas R. Frieden, MD, MPH
Director
Centers for Disease Control and Prevention
1600 Clifton Rd, MS D-14
Atlanta, GA 30333

Dear Dr. Frieden:

This letter is in response to your request that the Food and Drug Administration (FDA) issue an Emergency Use Authorization (EUA) for emergency use of the Centers for Disease Control and Prevention (CDC) Ebola Virus VP40 Real-time RT-PCR Assay for the presumptive detection of Ebola Zaire virus on a specified instrument in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors, by qualified laboratories designated by CDC, pursuant to section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. § 360bbb-3).

On September 22, 2006, then-Secretary of the Department of Homeland Security (DHS), Michael Chertoff, determined, pursuant to section 319F-2 of the Public Health Service (PHS) Act (42 U.S.C. § 247d-6b), that the Ebola virus presents a material threat against the United States population sufficient to affect national security.[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), and on the basis of such determination, the Secretary of HHS declared on August 5, 2014, that circumstances exist justifying the authorization of emergency use of *in vitro* diagnostics for detection of Ebola virus, subject to the terms of any authorization issued under 21 U.S.C. § 360bbb-3(a).[2]

Having concluded that the criteria for issuance of this authorization under section 564(c) of the Act (21 U.S.C. § 360bbb-3(c)) are met, I am authorizing the emergency use of the CDC Ebola Virus VP40 Real-time RT-PCR Assay (as described in the Scope of Authorization section of this letter (Section II)) in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors (as described in the Scope of Authorization section of this letter (Section II)) for the presumptive detection of Ebola Zaire virus by qualified laboratories designated by CDC, subject to the terms of this authorization.

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[1] Pursuant to section 564(b)(1) of the Act (21 U.S.C. § 360bbb-3(b)(1)), the HHS Secretary's declaration that supports EUA issuance must be based on one of four determinations, including the identification by the DHS Secretary of a material threat pursuant to section 319F-2 of the PHS Act sufficient to affect national security or the health and security of United States citizens living abroad (section 564(b)(1)(D) of the Act).

[2] U.S. Department of Health and Human Services. *Declaration Regarding Emergency Use of In Vitro Diagnostics for Detection of Ebola Virus.* 79 Fed. Reg. 47141 (August 12, 2014).

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of the CDC Ebola Virus VP40 Real-time RT-PCR Assay for the presumptive detection of Ebola Zaire virus in the specified population meets the criteria for issuance of an authorization under section 564(c) of the Act, because I have concluded that:

1. The Ebola Zaire virus can cause Ebola, a serious or life-threatening disease or condition to humans infected with this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the CDC Ebola Virus VP40 Real-time RT-PCR Assay, when used with the specified instrument, may be effective in diagnosing Ebola Zaire virus, and that the known and potential benefits of the CDC Ebola Virus VP40 Real-time RT-PCR Assay, when used with the specified instrument for diagnosing Ebola Zaire virus infection, outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative to the emergency use of the CDC Ebola Virus VP40 Real-time RT-PCR Assay for diagnosing Ebola Zaire virus.[3]

II. Scope of Authorization

I have concluded, pursuant to section 564(d)(1) of the Act, that the scope of this authorization is limited to the use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay by qualified laboratories designated by CDC for the presumptive detection of Ebola Zaire virus in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors.

The Authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay:

The CDC Ebola Virus VP40 Real-time RT-PCR Assay is a real-time reverse transcriptase PCR (rRT-PCR) for the *in vitro* qualitative detection of Ebola Zaire virus in whole blood, serum, and plasma specimens from individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors. The CDC Ebola Virus VP40 Real-time RT-PCR Assay can also be used with urine specimens when tested in conjunction with a patient-matched whole blood, serum, or plasma specimen. The test procedure consists of nucleic acid extraction using only the MagMax Pathogen RNA/DNA kit and the Dynal Bead Retriever followed by rRT-PCR on only the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument.

The CDC Ebola Virus VP40 Real-time RT-PCR Assay consists of two primer/probe sets: VP40 and RP (Rnase P). RNA is extracted from whole blood collected with EDTA as the anticoagulant, plasma, serum, or urine using only the MagMax Pathogen RNA/DNA kit on the Dynal Bead Retriever, not provided with the assay, prior to running on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument. The resulting purified RNA is analyzed only

[3] No other criteria of issuance have been prescribed by regulation under section 564(c)(4) of the Act.

on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument using provided primer/probe sets and required reagents with appropriate controls in place.

The CDC Ebola Virus VP40 Real-time RT-PCR Assay includes the following assay controls:

- EBOV VP40 rRT-PCR Positive Control – Used as a control for PCR reagent function.
- NTC – A known negative template control (sterile, nuclease-free water) added during rRT-PCR reaction set-up. Used as a control for PCR reagent function and cross-contamination.
- HSC – A known negative extraction control (human A549 cells) that is **extracted concurrently** with the test samples and included as a sample during rRT-PCR set-up. Should be negative for VP40, but positive for RP. Used as a control to demonstrate successful extraction and as a control for cross-contamination.
- RP – All clinical samples should be tested for human RNAse P gene (using the RP primer and probe set included in the EBOV VP40 rRT-PCR kit) to control for specimen quality and extraction.

The above described CDC Ebola Virus VP40 Real-time RT-PCR Assay, when labeled consistently with the labeling authorized by FDA entitled "Ebola Virus VP40 Real-Time RT-PCR Assay" (available at http://www.fda.gov/MedicalDevices/Safety/EmergencySituations/ucm161496.htm), which may be revised by CDC in consultation with FDA, is authorized to be distributed to and used by qualified laboratories designated by CDC under this EUA, despite the fact that it does not meet certain requirements otherwise required by federal law.

The above described CDC Ebola Virus VP40 Real-time RT-PCR Assay is authorized to be accompanied by the following information pertaining to the emergency use, which is authorized to be made available to health care professionals and patients:

- **Fact Sheet for Health Care Providers: Interpreting CDC Ebola Virus VP40 Real-Time RT-PCR (EBOV VP40 rRT-PCR) Assay Results**

- **Fact Sheet for Patients: Understanding Results from the CDC Ebola Virus VP40 Real-Time RT-PCR (EBOV VP40 rRT-PCR) Assay**

As described in Section IV below, CDC is also authorized to make available additional information relating to the emergency use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

I have concluded, pursuant to section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay in the specified population, when used for presumptive detection of Ebola Zaire virus, outweigh the known and potential risks of such a product.

I have concluded, pursuant to section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that the authorized CDC Ebola Virus

VP40 Real-time RT-PCR Assay may be effective in the diagnosis of Ebola Zaire virus infection pursuant to section 564(c)(2)(A) of the Act. The FDA has reviewed the scientific information available to FDA including the information supporting the conclusions described in Section I above, and concludes that the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay, when used to diagnose Ebola Zaire virus infection in the specified population, meets the criteria set forth in section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay under this EUA must be consistent with, and may not exceed, the terms of this letter, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section IV). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of DHS's determination described above and the Secretary of HHS's corresponding declaration under section 564(b)(1), the CDC Ebola Virus VP40 Real-time RT-PCR Assay described above is authorized to diagnose Ebola Zaire virus infection in individuals in affected areas with signs and symptoms of Ebola virus infection and/or epidemiological risk factors.

This EUA will cease to be effective when the HHS declaration that circumstances exist to justify the EUA is terminated under section 564(b)(2) of the Act or when the EUA is revoked under section 564(g) of the Act.

III. Waiver of Certain Requirements

I am waiving the following requirements for the CDC Ebola Virus VP40 Real-time RT-PCR Assay during the duration of this EUA:

- Current good manufacturing practice requirements, including the quality system requirements under 21 CFR Part 820 with respect to the design, manufacture, packaging, labeling, storage, and distribution of the CDC Ebola Virus VP40 Real-time RT-PCR Assay.

- Labeling requirements for cleared, approved, or investigational devices, including labeling requirements under 21 CFR 809.10 and 21 CFR 809.30, except for the intended use statement (21 CFR 809.10(a)(2), (b)(2)), adequate directions for use (21 U.S.C. 352(f)), (21 CFR 809.10(b)(5), (7), and (8)), any appropriate limitations on the use of the device including information required under 21 CFR 809.10(a)(4), and any available information regarding performance of the device, including requirements under 21 CFR 809.10(b)(12).

IV. Conditions of Authorization

Pursuant to section 564 of the Act, I am establishing the following conditions on this authorization:

Centers for Disease Control and Prevention (CDC)

A. CDC will distribute the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay with the authorized labeling, as may be revised by CDC in consultation with FDA, only to qualified laboratories designated by CDC.

B. CDC will provide to qualified laboratories designated by CDC the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Health Care Providers and the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Patients.

C. CDC will make available on its website the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Health Care Providers and the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Patients.

D. CDC will inform qualified laboratories designated by CDC and relevant public health authority(ies) of this EUA, including the terms and conditions herein.

E. CDC will ensure that qualified laboratories designated by CDC using the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

F. CDC will track adverse events and report to FDA under 21 CFR Part 803.

G. Through a process of inventory control, CDC will maintain records of device usage.

H. CDC will collect information on the performance of the assay, and report to FDA any suspected occurrence of false positive or false negative results of which CDC becomes aware.

I. CDC is authorized to make available additional information relating to the emergency use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay that is consistent with, and does not exceed, the terms of this letter of authorization.

J. CDC may request changes to the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Health Care Providers or the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay Fact Sheet for Patients. Such requests will be made by CDC in consultation with FDA.

Qualified Laboratories Designated by CDC

K. Qualified laboratories designated by CDC will include with reports of the results of the CDC Ebola Virus VP40 Real-time RT-PCR Assay the authorized Fact Sheet for Health Care Providers and the authorized Fact Sheet for Patients. Under exigent circumstances, other appropriate methods for disseminating these Fact Sheets may be used, which may include mass media.

L. Qualified laboratories designated by CDC will perform the CDC Ebola Virus VP40 Real-time RT-PCR Assay only on the Applied Biosystems (ABI) 7500 Fast Dx Real-Time PCR Instrument.

M. Qualified laboratories designated by CDC will have a process in place for reporting test results to health care professionals and relevant public health authorities, as appropriate.

N. Qualified laboratories designated by CDC will collect information on the performance of the assay, and report to CDC any suspected occurrence of false positive or false negative results of which they become aware.

O. All laboratory personnel using the assay should be appropriately trained in RT-PCR techniques and use appropriate laboratory and personal protective equipment when handling this kit.

CDC and Qualified Laboratories Designated by CDC

P. CDC and qualified laboratories designated by CDC will ensure that any records associated with this EUA are maintained until notified by FDA. Such records will be made available to FDA for inspection upon request.

Conditions Related to Advertising and Promotion

Q. All advertising and promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay shall be consistent with the Fact Sheets and authorized labeling, as well as the terms set forth in this EUA and the applicable requirements set forth in the Act and FDA regulations.

R. All advertising and promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay shall clearly and conspicuously state that:

- This test has not been FDA cleared or approved;
- This test has been authorized by FDA under an Emergency Use Authorization for use by qualified laboratories designated by CDC;
- This test has been authorized only for the detection of Ebola Zaire virus and not for any other viruses or pathogens; and
- This test is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola Zaire virus under section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the authorization is terminated or revoked sooner.

No advertising or promotional descriptive printed matter relating to the use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay may represent or suggest that this test is safe or effective for the diagnosis of Ebola Zaire virus.

The emergency use of the authorized CDC Ebola Virus VP40 Real-time RT-PCR Assay as described in this letter of authorization must comply with the conditions and all other terms of this authorization.

Page 7 – Dr. Frieden, Centers for Disease Control and Prevention

V. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of *in vitro* diagnostics for detection of Ebola virus is terminated under section 564(b)(2) of the Act or the EUA is revoked under section 564(g) of the Act.

Sincerely,

Margaret A. Hamburg, M.D.
Commissioner of Food and Drugs

Enclosures

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30108 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Bioequivalence Recommendations for Methylphenidate Hydrochloride Extended-Release Oral Suspension; Draft Guidance for Industry; 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 entitled ''Bioequivalence Recommendations for Methylphenidate Hydrochloride Extended-Release Oral Suspension.'' The recommendations provide specific guidance on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for methylphenidate hydrochloride (HCl) extended-release oral suspension.

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 comments 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 February 23, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. 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: Kris André, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 4726, Silver Spring, MD 20993–0002, 240–402–7959.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*. As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of draft BE recommendations for methylphenidate HCl extended-release oral suspension.

New drug application 202100 for Quillivant XR (methylphenidate HCl) extended-release oral suspension was initially approved by FDA in September 2012. There are no approved ANDAs for this product. FDA is now issuing a draft guidance for industry on BE recommendations for generic methylphenidate HCl extended-release oral suspension (Draft Methylphenidate HCl Oral Suspension BE Recommendations).

In August 2014, Pfizer, Inc., manufacturer of the reference listed drug, Quillivant XR, submitted a citizen petition requesting that FDA establish certain BE requirements for any new drug product that references Quillivant XR and seeks approval by means of demonstrating BE to Quillivant XR (Docket No. FDA–2014–P–1269). FDA is reviewing the issues raised in the petition.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for methylphenidate HCl extended-release oral suspension. 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 statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: December 18, 2014.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2014–30109 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0001]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

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

DATES: *Date and Time:* The meeting will be held on February 27, 2015, from 8 a.m. to 6 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring MD 20993–0002, *Patricio.Garcia@fda.hhs.gov,* 301–796–6875, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On February 27, 2015, the committee will discuss, make recommendations and vote on information regarding the premarket approval application (PMA) panel-track supplement to expand the indication for use for the Radiesse Injectable Implant (Radiesse) device to include subdermal implantation for hand augmentation to correct volume deficit in the hands. The proposed indication for use for the Radiesse device, as stated in the PMA is as follows:

The Radiesse device is for hand augmentation to correct volume deficit in the hands.

FDA has previously approved the Radiesse device for the following two indications for use: The Radiesse device is indicated for subdermal implantation for the correction of moderate to severe facial wrinkles and folds, such as nasolabial folds. It is also indicated for subdermal implantation for restoration and/or correction of the signs of facial fat loss (lipoatrophy) in people with human immunodeficiency virus. The Radiesse device remains unchanged from the current FDA approved version.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 3, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before January 26, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by January 27, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Annmarie Williams at *Annmarie.Williams@fda.hhs.gov,* or 301–796–5966 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 17, 2014.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2014–30149 Filed 12–23–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-Up Exclusive Commercialization License: Anti-Tyrosine Kinase-Like Orphan Receptor 1 Immunotoxins for the Treatment of Human Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a start-up exclusive commercialization license to practice the inventions embodied in U.S. Patent Application 61/172,099 entitled ''Anti-human ROR1 Antibodies'' [HHS Ref. E–097–2009/0–US–01], U.S. Patent Application No. 13/990,977 entitled, ''Chimeric Rabbit/Human ROR1 Antibodies'' filed June 7, 2013 [HHS Ref. No. E–039–2011/0], U.S. Patent Application 60/703,798 entitled ''Mutated Pseudomonas Exotoxins with Reduced Antigenicity'' [HHS Ref. E–262–2005/0–US–01], U.S. Patent Application 60/969,929 entitled ''Deletions in Domain II of Pseudomonas Exotoxin A that Remove Immunogenic Epitopes with Affecting Cytotoxic Activity'' [HHS Ref. E–292–2007/0–US–01], U.S. Patent Application 61/241,620 entitled ''Improved Pseudomonas Exotoxin A with Reduced Immunogenicity'' [HHS Ref. E–269–2009/0–US–01], U.S. Patent Application 61/483,531 entitled ''Recombinant Immunotoxin Targeting Mesothelin'' [HHS Ref. E–117–2011/0–US–01], U.S. Patent Application 61/495,085 entitled ''Pseudomonas Exotoxin A with Less Immunogenic T-Cell/or B-Cell Epitopes'' [HHS Ref. E–174–2011/0–US–01], U.S. Patent Application 61/535,668 entitled ''Pseudomonas Exotoxin A with Less Immunogenic B-Cell Epitopes'' [HHS Ref. E–263–2011/0–US–01], and any PCT, US or foreign applications claiming benefit of the technology families, to Magnifygen, Inc. The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the development and use of immunotoxins comprising an anti-tyrosine kinase-like orphan receptor 1 monoclonal antibody designated as 2A2, R11, R12, or Y31 and *Pseudomonas* exotoxin A for the treatment of human cancers as claimed within the scope of the Licensed Patent Rights. For avoidance of doubt, the Licensed Field of Use excludes the development of antibody-drug conjugates and bispecific antibodies comprising said antibodies.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before January 8, 2015 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Jennifer Wong, M.S., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4633; Facsimile: (301) 402–0220; Email: *wongje@od.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention concerns anti-ROR1immunotoxin comprising an anti-ROR1antibody designated as 2A2, R11, R12 or Y31 and *Pseudomonas* Exotoxin A (PE) as treatment for human ROR1 expressing cancers. The immunotoxin will comprise a chimeric mouse anti-human receptor tyrosine kinase-like orphan receptor 1 monoclonal antibody whereas the immunotoxin will have a toxin domain derived from PE. PE toxin's domain have been modified in various ways in order to reduce the immunogenicity of the molecule to improve its therapeutic value while at the same time maintaining the toxin's ability to trigger cell death. The immunotoxin provides targeted cytotoxic delivery to cancer cells while sparing normal cells thereby resulting in therapies with fewer side effects.

The prospective start-up exclusive commercialization license is being considered under the small business initiative launched on October 1, 2011 and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404 within fifteen (15) days from the date of this published notice.

Any additional, properly filed, and complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 19, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–30259 Filed 12–23–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–115]

30-Day Notice of Proposed Information Collection: Report of Additional Classification and Rate

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: January 23, 2015.*

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: Anna Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Anna_Guido@hud.gov* or telephone 202–402–5535. 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. Guido.

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 October 24, 2014.

A. Overview of Information Collection

Title of Information Collection: Report of Additional Classification and Rate.

OMB Approval Number: 2501–0011.

Type of Request: Reinstatement without change of a previously approved collection.

Form Number: HUD FORM 4230A, HUD FORM 4750, HUD FORM 4751, HUD FORM 4752.

Description of the need for the information and proposed use: The information is used by HUD and agencies administering HUD programs to collect information from laborers and mechanics employed on projects subjected to the Federal Labor Standards provisions. The information collected is compared to information submitted by the respective employer on certified payroll reports. The comparison tests the accuracy of the employer's payroll data and may disclose violations. Generally, these activities are geared to the respondent's benefit that is to determine whether the respondent was underpaid and to ensure the payment of wage restitution to the respondent.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Estimated number of burden hours is 5,000. Estimated number of respondents is 20,000, the estimated number of responses is 20,000, the frequency of response is on occasion, and the burden hour per response is .25.

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: December 18, 2014.

Anna Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–30246 Filed 12–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–114]

30-Day Notice of Proposed Information Collection: Management Reviews of Multifamily Housing Programs

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:* January 23, 2015.

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 October 20, 2014.

A. Overview of Information Collection

Title of Information Collection: Management Review for Multifamily Housing Projects.

OMB Approval Number: 2502–0178.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–9834.

Description of the need for the information and proposed use: This information collection is used by HUD, by Mortgagees, and by Contract Administrators (CAs) to evaluate the quality of project management; determine the causes of project problems; devise corrective actions to stabilize projects and prevent defaults; and to ensure that fraud, waste and mismanagement are not problems for the community. The information collected also supports enforcement actions when owners fail to implement corrective actions.

Respondents: Business or other for-profit.

Estimated Number of Responses: 24,112.

Frequency of Response: Annually 8.

Average Hours per Response: 40.

Total Estimated Burdens: 194,896.

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: December 18, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–30250 Filed 12–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–112]

30-Day Notice of Proposed Information Collection: Congregate Housing Services Program

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: January 23, 2015.*

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 September 3, 2014.

A. Overview of Information Collection

Title of Information Collection: Congregate Housing Services Program.

OMB Approval Number: 2502–0485.

Type of Request: Extension of currently approved collection.

Form Number: HUD–90003, HUD–90006, HUD–90198, HUD–91180–A, SF–425, HUD–91178–A.

Description of the need for the information and proposed use: Completion of the Annual Report by grantees provides HUD with essential information about whom the grant is serving and what sort of services the beneficiaries receive using grant funds. The Summary Budget and the Annual Program Budget make up the budget of the grantee's annual extension request. Together the forms provide itemized expenses for anticipated program costs and a matrix of budgeted yearly costs. The budget forms show the services funded through the grant and demonstrate how matching funds, participant fees, and grant funds will be used in tandem to operate the grant program. Field staff approve the annual budget and request annual extension funds according to the budget. Field staff can also determine if grantees are meeting statutory and regulatory requirements through the evaluation of this budget.

HUD will use the Payment Voucher to monitor use of grant funds for eligible activities over the term of the grant. The Grantee may similarly use the Payment Voucher to track and record their requests for payment reimbursement for grant-funded activities.

Respondents: Non-profit institutions.

Estimated Number of Responses: 49.

Estimated Number of Responses: 392.

Frequency of Response: Semi-annually to annually.

Average Hours per Response: 2.

Total Estimated Burdens: 612.5.

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: December 17, 2014.

Colette Pollard,

Department Reports Management Officer. Office of the Chief Information Officer.

[FR Doc. 2014–30066 Filed 12–23–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–52]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or

(3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Agriculture: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; Air Force: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland, TX 78236–9853; Army: Ms. Veronica Rines, Office of the Assistant Chief of Staff for Installation Management, Department of Army, Room 5A128, 600 Army Pentagon, Washington, DC 20310, (571) 256–8145; Commerce: Ms. Linda Steward, Department of Commerce, Office of Real Estate, 1401 Constitution Ave. NW., Room 1036, Washington, DC 20230, (202) 482–1770; Coast Guard: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2703 Martin Luther King Jr. Ave. SE., Stop 7714, Washington, DC 20593; (202) 475–5609; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; Navy: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685–9426 (These are not toll-free numbers).

Dated: December 15, 2014.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/24/2014

Suitable/Available Properties

Building

Ohio

Glenn Research Center-
Plumbrook Station: Big Island Plumbing
Station; 6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: GSA
Property Number: 54201440014
Status: Excess
GSA Number: 1–Z–OH–0598–3–AC
Directions: Landholding Agency: NASA; Disposal Agency: GSA
Comments: Off-site removal only; 3,756 sq. ft.; 24+ months vacant; may be difficult to relocate due to size/type; contact GSA for more information

South Dakota

9201
Ellsworth AFB
9201 Lincoln
Ellsworth SD 57706
Landholding Agency: Air Force
Property Number: 18201440033
Status: Underutilized
Comments: 3,619 sq. ft.; security forces training facility; 1+ yr. vacant; very poor conditions; high noise levels; contact Air Force for more information

Land

Ohio

Glenn Research Center-
Plumbrook Station: Parcel #63
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: GSA
Property Number: 54201440012
Status: Excess
GSA Number: 1–Z–OH–0598–5–AE
Directions: Landholding Agency: NASA; Disposal Agency: GSA
Comments: 11.5 acres; contamination; various illegally dumped solid waste items (*e.g.*, lead acid batteries, oil filters & containers, & gas cylinders); contact GSA for more information

Unsuitable Properties

Building

California

3 Buildings
1001 S. Seaside Ave.
Long Beach CA 90731
Landholding Agency: Coast Guard
Property Number: 88201440003
Status: Excess
Directions: 37; 39; 49
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Guam

Building 25006
Anderson AFB
Anderson GU 96543
Landholding Agency: Navy
Property Number: 77201440025
Status: Excess
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Indiana

00796
3005 Ferguson Rd.
Ft. Wayne IN 46809
Landholding Agency: Air Force
Property Number: 18201440034
Status: Unutilized
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Indiana

Middle Creek Access Site
State Road 111
New Albany IN 47150
Landholding Agency: GSA
Property Number: 54201440011
Status: Excess
GSA Number: 1–D–IN–606–2
Directions: Landholding Agency: COE; Disposal Agency: GSA
Comments: Entire property located within a floodway which has not been corrected or contained
Reasons: Floodway

Maryland

#308
100 Bureau Dr.
Gaithersburg MD
Landholding Agency: Commerce
Property Number: 27201440001
Status: Unutilized
Comments: Documented deficiencies: significant water damage; severe mold infestation throughout property; ceiling falling; clear threat to physical safety
Reasons: Extensive deterioration

Michigan

Building 951
Selfridge ANGB
Selfridge MI 48045
Landholding Agency: Air Force
Property Number: 18201440035
Status: Unutilized
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Texas

2 Buildings
Air Force Plant 4
Ft. Worth TX
Landholding Agency: Air Force
Property Number: 18201440032
Status: Underutilized
Directions: 86; 150
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

4 Buildings
Fort Hood
Ft. Hood TX 76544
Landholding Agency: Army
Property Number: 21201440061
Status: Unutilized
Directions: 36019; 36027; 36028; 36043
Comments: Public access denied and no alternative method to gain access without compromising national security
Reasons: Secured Area

Wisconsin

Vanderveen Barn; Infra. #332
N15484 Shady Knoll Road
Park Falls WI 54552
Landholding Agency: Agriculture
Property Number: 15201440009
Status: Unutilized
Comments: Documented deficiencies: dilapidated; sections of missing/collapsing; clear threat to physical safety
Reasons: Extensive deterioration

Land

Ohio

Glenn Research Center-
Plumbrook Station: Parcel #4
6100 Columbus Ave.
Sandusky OH 44870
Landholding Agency: GSA
Property Number: 54201440013
Status: Excess
GSA Number: 1–Z–OH–0598–4–AD
Directions: Landholding Agency: NASA; Disposal Agency: GSA
Comments: Landlocked; can only be reached by crossing private property & there is no established right or means of entry
Reasons: Not accessible by road

[FR Doc. 2014–29681 Filed 12–23–14; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[ONRR–2012–0003 DS63600000 DR2PS0000.PX8000 156D0102R2]

Notice of Request for Nominees for the U.S. Extractive Industries Transparency Initiative Advisory Committee

AGENCY: Office of Natural Resources Revenue Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior is seeking nominations for individuals to be Committee members or alternates on the U.S. Extractive Industries Transparency Initiative Advisory Committee. We seek nominees who can represent stakeholder constituencies from government, civil society, and industry so that we can fill current vacancies and create a roster of candidates in case future vacancies occur.

DATES: Submit nominations by March 31, 2015.

ADDRESSES: You may submit nominations by any of the following methods.

- Mail or hand-carry nominations to Ms. Rosita Compton Christian; Department of the Interior; 1849 C Street NW., MS 4211, Washington, DC 20240.
- Email nominations to *USEITI@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Rosita Compton Christian at (202) 208–0272 or (202) 513–0597; fax (202) 513–0682; email *Rosita.ComptonChristian@onrr.gov* or *useiti@ios.doi.gov;* or via mail at the Department of the Interior; 1849 C Street NW., MS 4211; Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Interior established the Committee on July 26, 2012, in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and with the concurrence of the General Services Administration. The Committee serves as the U.S. Extractive Industries Transparency Initiative Multi-Stakeholder Group and advises the Secretary of the Interior on design and implementation of the initiative.

The Committee does the following:

- Oversees the U.S. implementation of the Extractive Industries Transparency Initiative (EITI), a global standard for governments to publicly disclose revenues received from oil, gas, and mining assets belonging to the government, with parallel public disclosure by companies of payments to the government (*e.g.* royalties, rents, bonuses, taxes, or other payments).
- Develops and recommends to the Secretary a fully-costed work plan, containing measurable targets and a timetable for implementation and incorporating an assessment of capacity constraints. This plan will be developed in consultation with key EITI stakeholders and published upon completion.
- Provides opportunities for collaboration and consultation among stakeholders.
- Advises the Secretary and posts for consideration by other stakeholders proposals for conducting long-term oversight and other activities necessary to achieve and maintain EITI-compliant status.

The Committee consists of representatives from three stakeholder sectors. The sectors are as follows:

- Industry, including non-Federal representatives from the extractive industry, including oil, gas, and mining companies and industry-related trade associations.
- Civil society, including organizations with an interest in extractive industries, transparency, and government oversight; members of the public; and public and/or private investors.
- Government, including Federal, State, local, and Tribal governments and individual Indian mineral owners.

In addition to honoring the EITI principle of self-selection within the stakeholder sector, the following criteria will be considered in making final selections:

- Understanding of and commitment to the EITI process;
- Ability to collaborate and operate in a multi-stakeholder setting;
- Access to and support from a relevant stakeholder constituency; and
- Basic understanding of the extractive industry and/or revenue collection; or willingness to be educated on such matters.

Nominations should include a resume providing relevant contact information and an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and to permit the Department of the Interior to contact a potential member.

Parties are strongly encouraged to work with and within stakeholder sectors (including industry, civil society, and government sectors, as the EITI process defines) to jointly consider and submit nominations that, overall, reflect the diversity and breadth of their sector. Nominees are strongly encouraged to include supporting letters from constituents, trade associations, alliances, and/or other organizations that indicate the support by a meaningful constituency for the nominee.

Individuals who are Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

The Committee will meet quarterly or at the request of the Designated Federal Officer. Non-Federal members of the Committee will serve without compensation. However, we may pay the Travel and per diem expenses of Committee members, if appropriate, under the Federal Travel Regulations.

To learn more about USEITI please visit the official Web site at *www.doi.gov/eiti.*

Dated: December 17, 2014.

Paul A. Mussenden,

Deputy Assistant Secretary—Natural Resources Revenue Management.

[FR Doc. 2014–30220 Filed 12–23–14; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX15EE000101100]

Public Review of the Draft Part 2 (Revision), Digital Orthoimagery, of the Federal Geographic Data Committee (FGDC) Geographic Information Framework Data Standard

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice; request for comment

SUMMARY: The Federal Geographic Data Committee (FGDC) is conducting a public review of the draft Part 2 (revision), Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard.

The primary purpose of Part 2, Digital Orthoimagery, of the FGDC Geographic Information Framework Data Content Standard is to support exchange of orthoimagery data. Part 2 seeks to establish a common baseline for the semantic content of orthoimagery databases for public agencies and private enterprises. It also seeks to decrease the costs and simplify the exchange of orthoimagery data among local, Tribal, State, and Federal users and producers. That, in turn, discourages duplicative data collection. Benefits of adopting Part 2 also include the long-term improvement of geospatial orthoimagery data within the community.

The draft Part 2 (revision), Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard, may be downloaded from *https://www.fgdc.gov/standards/projects/FGDC-standards-projects/framework-data-standard/DraftRevisionPart2.* Comments shall be submitted using the content template at *http://www.fgdc.gov/standards/process/standards-directives/template.doc.* Instructions for completing the comment template are found in FGDC Standards Directive #2d, Standards Working Group Review Guidelines: Review Comment Template, *http://www.fgdc.gov/standards/process/standards-directives/directive-2d-standards-working-group-review-guidelines-review-comment-template.*

Comments that concern specific issues/changes/additions may result in changes in the draft Part 2 (revision), Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard. Reviewers may obtain information about how comments were addressed upon request. After FGDC endorsement of Part 2 (revision), Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard and a summary analysis of the changes will be made available to the public on the FGDC Web site, *www.fgdc.gov.*

DATES: Comments on the draft Part 2 (revision), Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard, shall be submitted to Ms. Julie Binder Maitra, FGDC Standards Coordinator, *jmaitra@fgdc.gov* by March 24, 2015.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Binder Maitra, U.S. Geological Survey, Federal Geographic Data Committee, *jmaitra@fgdc.gov,* 703–648–4627

SUPPLEMENTARY INFORMATION: Part 2, Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard specifies data content and logical structure for the description and interchange of framework digital orthoimagery. To a certain extent, it also provides guidelines for the acquisition and processing of imagery for generation of digital orthoimagery and specifies the documentation of those acquisition and processing steps. The primary focus of Part 2 is on images sensed in the visible to near infrared portion of the electromagnetic spectrum; however, images captured from other portions of the electromagnetic spectrum are not precluded.

It is the intent of Part 2, Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard to set a common baseline that will ensure the widest utility of digital orthoimagery for the user and producer communities through enhanced data sharing and the reduction of redundant data production. Part 2 stresses complete and accurate reporting of information relating to quality control and standards employed in testing orthoimagery data.

Part 2, Digital Orthoimagery, of the FGDC Geographic Information Framework Data Standard applies to orthoimagery data produced or disseminated by or for the Federal government. According to Office of Management and the Budget (OMB) Circular A–16 (Revised) on Coordination of Geographic Information Related Spatial Data Activities, Federal agencies collecting or producing geospatial data, either directly or indirectly (for example, through grants, partnerships, or contracts with other entities), shall ensure, prior to obligating funds for such activities, that data will be collected in a manner that meets all relevant standards adopted through the Federal Geographic Data Committee (FGDC) process.

Work on the FGDC Geographic Information Framework Data Standard began under the Geospatial One-Stop e-Government initiative. The FGDC subsequently endorsed the Geographic Information Framework Data Standard, Parts 1–7, in 1998. Part 2 needed to be revised due to technological changes, such as the transition from film to digital cameras. The main changes included adding new terms, clarification of definitions, and typo fixes.

The FGDC coordinates the development of the National Spatial Data Infrastructure (NSDI), which encompasses the policies, standards, and procedures for organizations to cooperatively produce and share geospatial data. Federal agencies that make up the FGDC develop the NSDI in cooperation with organizations from State, local and tribal governments, the academic community, and the private sector. The authority for the FGDC is

OMB Circular No. A–16 Revised on Coordination of Geographic Information and Related Spatial Data Activities (Revised August 19, 2002). More information on the FGDC and the NSDI is available at *http://www.fgdc.gov.*

Kenneth Shaffer,

Deputy Executive Director, Federal Geographic Data Committee.

[FR Doc. 2014–30117 Filed 12–23–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO310000.L13100000.PP0000.15X]

Renewal of Approved Information Collection; OMB Control No. 1004–0162

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act, the Bureau of Land Management (BLM) invites public comments on, and plans to request approval to continue, the collection of information pertaining to surface-disturbing activities associated with onshore oil and gas geophysical exploration within oil and gas leases, communitized areas, and unitized areas on Federal lands managed by the Bureau of Land Management (BLM) or the U.S. Forest Service (FS). The Office of Management and Budget (OMB) has assigned control number 1004–0162 to this information collection.

DATES: Please submit comments on the proposed information collection by February 23, 2015.

ADDRESSES: Comments may be submitted by mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0162'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Spencer, at 202–912–7146. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Spencer.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act, 44 U.S.C. 3501–3521, require that interested members of the public and affected agencies be given an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM plans to submit to OMB for approval. The Paperwork Reduction Act provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will request a 3-year term of approval for this information collection activity. Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) The accuracy of the agency's burden estimates; (3) Ways to enhance the quality, utility and clarity of the information collection; and (4) Ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany our submission of the information collection requests to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal 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 following information pertains to this request:

Title: Onshore Oil and Gas Geophysical Exploration (43 CFR part 3150 and 36 CFR parts 228 and 251).

OMB Control Number: 1004–0162.

Summary: The BLM and the FS collect the information from those who wish to participate in the evaluation, development, and utilization of oil and gas resources. The BLM and FS need the information in order to manage surface operations that are under their respective jurisdictions.

Frequency of Collection: On occasion.

Forms:

• Notice of Intent and Authorization to Conduct Oil and Gas Geophysical Exploration Operations (BLM Form 3150–4/FS Form 2800–16); and

• Notice of Completion of Geophysical Exploration Operations (BLM 3150–5/FS 2800–16a).

Description of Respondents: Those who wish to participate in surface-disturbing evaluation, development, and utilization of oil and gas resources on Federal lands for mineral potential.

Estimated Annual Responses: 100.

Estimated Annual Burden Hours: 65.

Estimated Annual Non-Hour Costs: $25.

The estimated burdens are itemized in the following table:

A. Type of response	B. Number of responses	C. Time per response	D. Total hours (column B × column C)
Notice of Intent and Request to Conduct Geophysical Exploration Operations/Outside Alaska (43 CFR 3151.1) BLM Form 3150–4/FS Form 2800–16.	45 (20 to BLM and 25 to FS)	1 hour	45
Notice of Intent and Request to Conduct Geophysical Exploration Operations/Alaska (43 CFR 3152.1, 3152.3, 3152.4, and 3152.5) BLM Form 3150–4.	1	1 hour	1
Notice of Completion of Geophysical Exploration Operations (43 CFR 3151.2 and 3152.7) BLM Form 3150–5/FS Form 2800–16a.	53 (28 to BLM and 25 to FS)	20 minutes	18
Data and Information Obtained in Carrying Out Exploration Plan (Alaska only) (43 CFR 3152.6).	1	1 hour	1
Totals	100		65

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2014–30171 Filed 12–23–14; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DQ0000]

Notice of Resource Advisory Council Meeting for the Dominguez-Escalante National Conservation Area Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dominguez-Escalante National Conservation Area (NCA) Advisory Council (Council) will meet as indicated below.

DATES: The meeting will be held on March 4, 2015, from 3 p.m. to approximately 6 p.m. Any adjustments to this meeting will be posted on the Dominguez-Escalante NCA RMP Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp.html.*

ADDRESSES: The meeting will be held at the Old County Courthouse, 544 Rood Avenue, Grand Junction, CO 81501.

FOR FURTHER INFORMATION CONTACT: Collin Ewing, Advisory Council Designated Federal Official, 2815 H Road, Grand Junction, CO 81506. Phone: (970) 244–3049. Email: *cewing@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, seven 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 10-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the Resource Management Plan (RMP) process for the Dominguez-Escalante NCA and Dominguez Canyon Wilderness.

Topics of discussion during the meeting may include informational presentations from various resource specialists working on the RMP as well as Council reports on the following topics: Recreation, fire management, land-use planning process, invasive species management, travel management, wilderness, land exchange criteria, cultural resource management and other resource management topics of interest to the Council that were raised during the planning process.

These meetings are anticipated to occur quarterly, and may occur as frequently as every two weeks during intensive phases of the planning process. Dates, times and agendas for additional meetings may be determined at future Council meetings, and will be published in the **Federal Register**, announced through local media and on the BLM's Web site for the Dominguez-Escalante planning effort, *www.blm.gov/co/st/en/nca/denca/denca_rmp.html.* These meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will have time allocated at the middle and end of each meeting to hear public comments. Depending on the number of persons wishing to comment and time available, the time for individual, oral comments may be limited at the discretion of the chair.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2014–30147 Filed 12–23–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS00000 L10100000.BN0000 15X]

Notice of Public Meetings, Southwest Colorado Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) is scheduled to meet as indicated below.

DATES: The Southwest Colorado RAC meetings will be held on February 20, 2015, in Montrose, Colorado, and May 8, 2015, in Durango, Colorado.

ADDRESSES: The Southwest Colorado RAC meetings will be held February 20 at the Montrose Public Lands Center, 2465 S. Townsend Ave., Montrose, CO 81401; and May 8 at the San Juan Public Center, 15 Burnett Court, Durango, CO 81301. The meetings begin at 9 a.m. and adjourn at approximately 4 p.m. A public comment period regarding matters on the agenda will be held at 11:30 a.m.

FOR FURTHER INFORMATION CONTACT: Lori Armstrong, BLM Southwest District Manager, 970–240–5300; or Shannon Borders, Public Affairs Specialist, 970–240–5300; 2505 S. Townsend Ave., Montrose, CO 81401. 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, seven 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 Southwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado. Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2014–30146 Filed 12–23–14; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORL00000.L10200000.DF0000. LXSS020H0000.15XL0019AF; HAG 15–0054]

Notice of Public Meeting for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972, and the U.S. Department of the Interior, Bureau of Land Management (BLM), the Southeast Oregon Resource Advisory Council (RAC) will meet as indicated below:

DATES: The Southeast Oregon RAC will hold a public meeting Monday and Tuesday, January 12 from 10 a.m. to 5 p.m. and January 13 from 8 a.m. to 12 p.m., 2015. A public comment period will be available at 1:30 p.m. on January 12, 2015. Unless otherwise approved by the Southeast Oregon RAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the Southeast Oregon RAC for a maximum of 5 minutes. Meeting times and the duration scheduled for public comment periods may be extended or altered when the authorized representative considers it necessary to accommodate necessary business and all who seek to be heard regarding matters before the Southeast Oregon RAC.

ADDRESSES: The meeting will be held at the Clarion Inn, 1249 Tapadera Ave., Ontario, OR 97914.

FOR FURTHER INFORMATION CONTACT: Scott Stoffel, BLM Lakeview District Office, 1301 S G Street, Lakeview, Oregon 97630, (541) 947–2177, or email *pstoffel@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 Southeast Oregon RAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon. Tentative agenda items for the January 12–13, 2015, meeting include: Lands with Wilderness Characteristics; Vale tri-state fuels discussion; discussion of Leslie Gulch fence; the Burns Vegetation EA; Transportation Planning on the Fremont—Winema National Forest; Sage Grouse RMPA updates and planning future meeting agendas, dates, and locations. Any other matters that may reasonably come before the Southeast Oregon RAC may also be addressed. This meeting is open to the public in its entirety. Information to be distributed to the Southeast Oregon RAC is requested prior to the start of each meeting.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

ELynn Burkett,

Lakeview District Manager.

[FR Doc. 2014–30198 Filed 12–23–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey; Colorado

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the survey plat listed below. The plat will be available for viewing at *http://www.glorecords.blm.gov*.

DATES: The plat described in this notice was filed on December 8, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

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, seven 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 supplemental plat of Section 20 in Township 42 North, Range 9 West, New Mexico Principal Meridian, Colorado, was accepted on December 5, 2014, and filed on December 8, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014–30134 Filed 12–23–14; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1124 and 1125 (Review)]

Electrolytic Manganese Dioxide From Australia and China

Determinations

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on electrolytic manganese dioxide (''EMD'') from Australia would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time and that revocation of the antidumping duty order on EMD from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

Background

The Commission instituted these reviews on September 3, 2013 (78 FR 54269) and determined on May 19, 2014 that it would conduct full reviews (79 FR 30163, May 27, 2014). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 27, 2014 (79 FR 30163). The hearing was held in Washington, DC, on October 21, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission completed and filed its determinations in this review on December 15, 2014. The views of the Commission are contained in USITC Publication 4506 (December 2014), entitled *Electrolytic Manganese Dioxide from Australia and China: Investigation Nos. 731–TA–1124 and 1125 (Review).*

By order of the Commission.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Dated: December 18, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–30161 Filed 12–23–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–940]

Certain Snowmobiles With Engines Having Exhaust Temperature-Controlled Engine Technology and Components Thereof Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 7, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Arctic Cat Inc. of Plymouth, Minnesota. An amended complaint was filed on December 12, 2014. The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain snowmobiles with engines having exhaust temperature-controlled engine technology and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,371,082 (''the '082 patent''); U.S. Patent No. 6,550,450 (''the '450 patent''); and U.S. Patent No. 7,258,107 (''the '107 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of investigation: Having considered the complaint, the U.S. International Trade Commission, on December 18, 2014, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain snowmobiles with engines having exhaust temperature-controlled engine technology and components thereof by reason of infringement of one or more of claims 1, 3–8, and 10–14 of the '082 patent; claims 1–3, 5–11, and 13–16 of the '450 patent; and claims 1–5, 7–10, and 15–19 of the '107 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Arctic Cat Inc., 505 North Highway 169, Suite 1000, Plymouth, MN 55441

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Bombardier Recreational Products, Inc., 726 rue St-Joseph Street, Valcourt, Québec, Canada, J0E 2L0, BRP US Inc., 10101 Science Drive, Sturtevant, WI 53177–1757

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Dated: December 18, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–30162 Filed 12–23–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–045]

Government In the Sunshine Act Meeting Notice

Change of Time of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission

DATE: December 29, 2014

NEW TIME: 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission hereby gives notice that the meeting of December 29, 2014 will be held at 10:00 a.m.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this change was not possible.

By order of the Commission.

Issued: December 22, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–30292 Filed 12–22–14; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Secretary's Order 01–2014

Subject: Delegation of Authority and Assignment of Responsibility to the Administrator, Wage and Hour Division.

1. *Purpose.* To delegate authorities and assign responsibilities to the Administrator, Wage and Hour Division.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); and Reorganization Plan No. 6 of 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in section 5 of this Order.

3. *Directives Affected.* Secretary's Order 05–2010 (Administrator, Wage and Hour Division) is hereby superseded. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Order 05–2010 are amended to refer to this Order.

4. *Background.* This Order supersedes Secretary's Order 05–2010 and delegates the Secretary's authority as a certifying official to issue Law Enforcement Agency Certifications (also referred to as declarations or endorsements) for T Nonimmigrant Status applications under section 107(e) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(T) and related Department of Homeland Security regulations (see 8 CFR 214.11), and delegates enforcement authority for E.O. 13658 to the Administrator, Wage and Hour Division. The authorities and responsibilities specified below are consistent with the Wage and Hour Division authorities and responsibilities currently in effect.

5. *Delegations of Authority and Assignment of Responsibility*

A. The Administrator, Wage and Hour Division is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes and Executive Orders:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to title 5, Government Organization and Employees. Authority and responsibility for FLSA sections 218a and 218b were transferred to the Employee Benefits Security Administration on December 21, 2011, pursuant to Secretary's Order 1–2011, including the associated authority in sections 209 and 211 to issue subpoenas and conduct investigations under sections 218a and 218b. Authority and responsibility for FLSA section 218c was transferred to the Occupational Health and Safety Administration pursuant to Secretary's Orders 5–2010 and 1–2012, including the associated authority in sections 209 and 211 to issue subpoenas and conduct investigations under section 218c.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 6707(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.,* and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in sections 5(i), (m), (n) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i)(m), (n) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1801 *et seq.,* including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.,* including subpoena authority under 29 U.S.C. 2004(b).

(10) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 258, 8 U.S.C. 1288(c)(4)(B)–(F), relating to the enforcement of the attestations required by employers pertaining to the employment of nonimmigrant longshore workers (D visas); sections 212(n)(2) and (t)(3), 8 U.S.C. 1182(n)(2) and (t)(3), relating to the enforcement of labor condition applications for employment of nonimmigrant professionals (H–1B, H–1B1, and E–3 visas); section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification program (H–2A visas); section 214(c)(14), 8 U.S.C. 1184(c)(14), relating to assuring employer compliance with the terms and conditions of employment under the temporary alien labor certification program in occupations other than agriculture or registered nursing (H–2B visas); and 8 U.S.C. 1101(a)(15)(U) and related Department of Homeland Security regulations (see 8 CFR 214.14), relating to issuance of U Nonimmigrant Status Certifications (U visa law enforcement certifications).

(11) The Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.* (FMLA), including subpoena authority under 29 U.S.C. 2616.

(12) The Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (OSH Act), to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance

interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Administrator, WHD under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(13) E.O. 13495 (''Nondisplacement of Qualified Workers Under Service Contracts'') of January 30, 2009.

(14) E.O. 13658 (''Establishing a Minimum Wage for Contractors'') of February 12, 2014.

(15) Such additional Federal laws that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(14) of this paragraph, as directed by the Secretary.

B. The Administrator, Wage and Hour Division is hereby delegated authority and assigned responsibility to issue administrative subpoenas under section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 6707(a); section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. The Wage and Hour Regional Administrators are hereby redelegated authority and assigned responsibility to issue administrative subpoenas under section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 6707 (a); section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. The Administrator, Wage and Hour Division is hereby delegated authority and assigned responsibility to issue Law Enforcement Agency Certifications for T Nonimmigrant Status applications under section 107(e) of the Victims of Trafficking and Violence Protection Act of 2000, as amended, 8 U.S.C. 1101(a)(15)(T) and related Department of Homeland Security regulations (see 8 CFR 214.11).

E. The Administrator, Wage and Hour Division and the Assistant Secretary for Occupational Safety and Health are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see section 7.a.(12) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

F. The Solicitor of Labor is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 2–2012 (November 16, 2012).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: December 19, 2014.

Thomas E. Perez,

Secretary of Labor.

[FR Doc. 2014–30224 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Amended Charter

In accordance with section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act, and the provisions of the Federal Advisory Committee Act and its implementing regulations issued by the General Services Administration (GSA), the Department of Labor established the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities on September 15, 2014.

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities is tasked with studying and preparing findings, conclusions, and recommendations for the Secretary of Labor on: (1) Ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and (3) ways to improve oversight of the use of such certificates.

Membership consists of seven ex officio members: The Assistant Secretary of Disability Employment Policy, the Assistant Secretary for Employment and Training Administration, and the Administrator of the Wage and Hour Division of the Department of Labor; the Commissioner of the Administration on Intellectual and Developmental Disabilities, or the Commissioner's designee; the Director of the Centers for Medicare and Medicaid Services, or the Director's designee; the Commissioner of Social Security, or the Commissioner's designee; and the Commissioner of the Rehabilitation Services Administration, or the Commissioner's designee.

Pursuant to the charter filed on September 15, 1014, it also consisted of approximately 10–12 representatives, appointed by the Secretary, with at least one from each of the following constituencies consisting of: Self-advocates for individuals with intellectual or developmental disabilities; providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment; representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities; experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities; representatives from the employer community or national employer organizations; and other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The amended charter increases the number of representatives serving these constituencies on the committee from approximately 10–12 members to approximately 15–17 members. Given the scope and complexity of the issues the committee must address, increasing the committee's size will better provide it with the expertise and balance of perspective needed to fully inform its recommendations. No other changes to the charter are being made.

For further information, contact Jennifer Sheehy, Designated Federal Officer, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–1303, Washington, DC 20210, telephone (202) 693–7880.

Signed at Washington, DC, this 17th day of December, 2014.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2014–30138 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Meeting

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) was mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act (WIOA). The Secretary of Labor established the Committee on September 15, 2014 in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act (FLSA) of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates. The Committee is required to meet no less than eight times. It is also required to submit an interim report to the Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce within one year of the Committee's establishment. A final report must be submitted to the same entities no later than two years from the Committee establishment date. The Committee terminates one day after the submission of the final report.

The first meeting of the Committee will open to the public beginning at 11:30 a.m. on Thursday, January 22, 2015 and continue through 5:00 p.m. on Friday, January 23, 2015 at the U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. The morning session on the first day will be closed for a FACA and membership briefing. In addition, the Committee will discuss a number of other administrative items, including selection of a chairperson, review of objectives, approval of the schedule for future meetings, and other items related to the administrative functioning of the Committee. Beginning at 11:30 a.m., the meeting will be open to the public for brief remarks from Federal Committee members and other relevant Federal officials. The officials will discuss the areas within their agencies that potentially impact the work of the committee and their agencies' work in helping people with significant disabilities obtain competitive, integrated employment, including, when relevant, their work in implementing section 14(c) of FLSA. The Committee will also hear from people with intellectual and/or developmental disabilities.

On January 23, the Committee will hear witness expert testimony on a number of topics, including, but not limited to: Research findings regarding the potential of workers with significant disabilities; current state policy efforts across the country to address challenges; and barriers that impede competitive, integrated employment options for individuals with disabilities. In addition, school-to-work transition experts will discuss model strategies for transitioning young people with significant disabilities from school to competitive, integrated employment, and a panel of providers will discuss their employment practices for youth and adults with significant disabilities.

Members of the public will have an opportunity to provide testimony from 3:15–4:15 p.m. on January 23rd. Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before January 14, 2015 to Christopher Button, Supervisory Policy Advisor, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, Suite S–1303, 200 Constitution Avenue NW., Washington, DC 20210. Statements also may be submitted as email attachments in rich text, Word, or pdf format transmitted to

IntegratedCompetitiveEmployment@dol.gov. It is requested that statements not be included in the body of an email. Statements deemed relevant by the Committee and received on or before January 14, 2015 will be included in the record of the meeting. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives or organizations wishing to address the Committee should forward their request by email to *IntegratedCompetitiveEmployment@dol.gov* or call Dr. Button at the U.S. Department of Labor's Office of Disability Employment Policy at (202) 693–4924. Oral presentations will be limited to five minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need accommodations should also contact Dr. Button at the address or phone number above.

Signed at Washington, DC, this 17th day of December, 2014.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2014–30137 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,537]

Cargill Meat Solutions Corporation, a Subsidiary of Cargill Incorporated; Including On-Site Leased Workers From Life Technologies and PSSI Sanitation, Milwaukee, Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 7, 2014, applicable to workers of Cargill Meat Solutions Corporation, a subsidiary of Cargill, Incorporated, Milwaukee, Wisconsin. The Department's notice of determination was published in the **Federal Register** on October 29, 2014 (79 FR 64413).

In response to a request by the state workforce office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of boxed beef, beef trim and beef byproducts.

The investigation confirmed that leased workers from Life Technologies and PSSI Sanitation also worked on-site at the subject firm.

Based on these findings, the Department is amending this certification to include on-site leased workers from Life Technologies and PSSI Sanitation, Milwaukee, Wisconsin.

The amended notice applicable to TA–W–85,537 is hereby issued as follows:

All workers of Cargill Meat Solutions Corporation, a subsidiary of Cargill, Incorporated, including on-site leased workers from Life Technologies and PSSI Sanitation, Milwaukee, Wisconsin, who became totally or partially separated from employment on or after September 15, 2013 through October 7, 2016 are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of December, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–30166 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,483A]

SMC Electrical Products, Inc., Subsidiary of Becker Mining America, Inc., Including On-Site Leased Workers From Bristol Computer Services and Kelly Services, Delta, Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 25, 2014, applicable to workers of SMC Electrical Products, Inc., a subsidiary of Becker Mining America, Inc., including on-site leased workers from Bristol Computer Services and Kelly Services, Barboursville, West Virginia (TA–W–85,483). The Department's Notice of Determination was published in the **Federal Register** on September 11, 2014 (79 FR 54291).

At the request of a petitioning union official, the Department reviewed the certification for workers of the subject firm. The firm is engaged in the production of electrical power control systems.

The investigation confirmed that worker separations at SMC Electrical Products, Inc., a subsidiary of Becker Mining America, Inc., including on-site leased workers from Bristol Computer Services and Kelly Services, Barboursville, West Virginia (TA–W–85,483) are attributable to increased imports of electrical power control systems, as are worker separations at the Delta, Colorado facility.

The amended notice applicable to TA–W–85,483 and TA–W–85,483A is hereby issued as follows:

All workers of SMC Electrical Products, Inc., a subsidiary of Becker Mining America, Inc., including on-site leased workers from Bristol Computer Services and Kelly Services, Barboursville, West Virginia (TA–W–85,483) and SMC Electrical Products, Inc., a subsidiary of Becker Mining America, Inc., including on-site leased workers from Bristol Computer Services and Kelly Services, Delta, Colorado (TA–W–85,483A) who became totally or partially separated from employment on or after August 13, 2013 through September 26, 2016 are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of December, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–30165 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,346]

Whirlpool Corporation; Including On-Site Leased Workers From Aerotek/Tek Systems (Subcontractor of IBM Corporation), Jones Lang Lasalle, and Otterbase, Inc. Fort Smith, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 10, 2013, applicable to workers of Whirlpool Corporation, including on-site leased workers from Aerotek/Tek Systems (subcontractor of

IBM Corporation), Fort Smith, Arkansas. The Department's notice of determination was published in the **Federal Register** on May 30, 2013 (78 FR 32464).

At the request of the State Workforce Office, the Department reviewed the certification for workers of the subject firm. The workers were engaged in production of refrigerators and trash compactors as well as decommissioning work for the facility closure.

The Department confirmed that workers leased from Jones Lang LaSalle and Otterbase, Inc. were employed on-site at the Fort Smith, Arkansas location of Whirlpool Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Otterbase, Inc. working on-site at the Fort Smith, Arkansas location of Whirlpool Corporation.

The amended notice applicable to TA–W–82,346 is hereby issued as follows:

All workers of Whirlpool Corporation, including on-site leased workers from Aerotek/Tek Systems (subcontractor of IBM Corporation), Jones Lang LaSalle, and Otterbase, Inc., Fort Smith, Arkansas, who became totally or partially separated from employment on or after October 7, 2012 through May 10, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through May 10, 2015, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of December, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–30164 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,221]

Plexus Corporation; Neenah Operations; Including On-Site Leased Workers From Kelly Services, Inc., Aerotek and Gold Star Solutions, Inc. Neenah, Wisconsin; Notice of Continuation of Certification

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 5, 2013, applicable to workers of Plexus Corporation, Neenah Operations, Neenah, Wisconsin. The Department's Notice of Determination was published in the **Federal Register** on April 30, 2013 (78 FR 25306).

The Department of Labor issued an Amended Certification Regarding to Apply for Worker Adjustment Assistance on January 29, 2014 to include leased workers from Kelly Services, Inc., Aerotek and Gold Star Solutions, Inc. working on-site at Plexus Corporation, Neenah Operations, Neenah, Wisconsin. The Department's Notice of Amended Determination was published in the **Federal Register** on February 12, 2014 (79 FR 8505).

On August 8, 2014, the Department issued a Notice of Initiation of Investigation to Terminate Certification applicable to workers and former workers of Plexus Corporation, Neenah Operations, Neenah, Wisconsin. The Department's Notice of Initiation of Investigation to Terminate Certification was published in the **Federal Register** on August 22, 2014 (79 FR 49814).

The Department's original investigation revealed that Section 222(a)(1) had been met because a significant number or proportion of the workers in such workers' firm had become totally or partially separated, or were threatened to become totally or partially separated.

Section 222(a)(2)(B) had been met because the workers' firm had shifted to a foreign country the production of articles like or directly competitive with the articles produced by the subject firm which contributed importantly to worker group separations at Plexus Corporation, Neenah Operations, Neenah, Wisconsin.

The Department has completed its review of the certification for workers of the subject firm pursuant to 29 CFR 90.17(a). The investigation included data collected from the subject firm, a major customer of the subject firm, and the original petitioner.

The subject firm continues to be engaged in activities related to the production of printed circuit board assemblies.

The Department's review revealed that the shift in production to a foreign country that was the original basis for the certification has completed and that the subject firm is no longer shifting production of like or directly competitive articles to a foreign country.

The Department's review further revealed that the group eligibility criteria specified in Section 222 of the Trade Act of 1974, as amended by the Trade Adjustment Assistance Extension Act of 2011, continue to be met. The group eligibility requirements for workers of a firm under Section 222(a) of the Act, 19 U.S.C. 2272(a), are satisfied if the following criteria are met:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2)(A)(i) the sales or production, or both, of such firm have decreased absolutely; and

(ii)(I) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased; and

(iii) the increase in imports described in clause (ii) contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm.

Section 222(a)(1) has been met because a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated.

Section 222(a)(2)(A)(i) has been met because the sales and production of printed circuit board assemblies by Plexus Corporation have decreased absolutely.

Section 222(a)(2)(A)(ii) has been met because customer imports of articles like or directly competitive with the printed circuit board assemblies produced by Plexus Corporation have increased.

Finally, Section 222(a)(2)(A)(iii) has been met because the increased customer imports contributed importantly to the worker group separations and sales/production declines at Plexus Corporation.

Conclusion

After careful review of the facts, I affirm the certification of workers and former workers of Plexus Corporation, Neenah Operations, including on-site leased workers from Kelly Services, Inc., Aerotek, and Gold Star Solutions, Inc., Neenah, Wisconsin.

Signed at Washington, DC, this 12th day of December, 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–30163 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–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 January 5, 2015.

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 January 5, 2015.

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 December 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[18 TAA petitions instituted between 12/1/14 and 12/5/14]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85679	Stuart Manufacturing LLC (Workers)	Central Falls, RI	12/02/14	12/01/14
85680	Dixie Aerospace (Company)	Atlanta, GA	12/02/14	12/01/14
85681	Atmel Corporation (State/One-Stop)	Colorado Springs, CO	12/02/14	12/01/14
85682	BEHR Process Corporation (Workers)	Chesterfield, MO	12/02/14	12/01/14
85683	Hamilton Sundstrand, United Technologies Corporation (Company).	San Diego, CA	12/03/14	12/02/14
85684	Heritage Home (Workers)	Belding, MS	12/03/14	12/02/14
85685	Merkle-Korff Industries (Company)	Darlington, WI	12/04/14	12/03/14
85686	SCHOTT North America Inc. (Company)	Duryea, PA	12/04/14	12/03/14
85687	Moog Aircraft (Workers)	Salt Lake City, UT	12/04/14	12/03/14
85688	Beechcraft/Textron (State/One-Stop)	Wichita, KS	12/04/14	12/03/14
85689	Honeywell Aerospace (State/One-Stop)	Moorestown, NJ	12/04/14	12/03/14
85690	Apex Tool Group, LLC (Company)	Garland, TX	12/04/14	12/03/14
85691	Covidien (State/One-Stop)	North Haven, CT	12/04/14	12/03/14
85692	Honeywell (State/One-Stop)	Canton, MA	12/04/14	11/20/14
85693	Green Creek Wood Products (State/One-Stop).	Port Angeles, WA	12/05/14	12/03/14
85694	Tyco Fire Protection Products (State/One-Stop).	Westminster, MA	12/05/14	12/04/14
85695	ME Electmetal (State/One-Stop)	Duluth, MN	12/05/14	12/04/14
85696	Hewlett Packard (Workers)	Omaha, NE	12/05/14	11/13/14

[FR Doc. 2014–30167 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of December 1, 2014 through December 5, 2014.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,489, Arvato Entertainment LLC, Weaverville, North Carolina. August 17, 2013.

85,616, Luminus Devices, Inc., Billerica, Massachusetts. October 18, 2014.

85,618, BSN Medical Inc., Rutherford College, North Carolina. October 23, 2013.

85,622, AFB International, O'Fallon, Missouri. October 30, 2013.

85,647, Fabrene LLC, Clackamas, Oregon. November 14, 2013.

85,657, Swisher International, Inc., Jacksonville, Florida. November 10, 2014.

85,660, Peavey Electronics Corporation, Meridian, Mississippi. November 18, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,583, Metalfab Tool & Machine, Inc., Mio, Michigan.

85,659, IDEW Technologies, Inc., Webster, Texas.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,601, Pitney Bowes Inc., Troy, New York.

85,612, CA Technologies, Plano, Texas.

85,637, Cincinnati Bell Telephone Company LLC, Norwood, Ohio.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

85,621, Advanced Technology Innovation Corporation, Wichita, Kansas.

85,638, Cardinal Health, Albuquerque, New Mexico.

I hereby certify that the aforementioned determinations were issued during the period of December 1, 2014 through December 5, 2014. These determinations are available on the Department's Web site *www.tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 11th day of December 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–30168 Filed 12–23–14; 8:45 am]

BILLING CODE 4510–FN–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION, THE UNITED STATES INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION

Agency Information Collection Activities: Notice of Intent To Request Emergency Extension Without Change of Currently Approved Information Collections; U.S. Institute for Environmental Conflict Resolution Application for Emergency Extension of Instruments Concerning Evaluation of Its Conflict Assessment Services, Training Services, Facilitated Meeting Services, Roster Program Services, and Program Support Services

AGENCY: Morris K. Udall and Stewart L. Udall Foundation, U.S. Institute for Environmental Conflict Resolution.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute), part of the Udall Foundation, will submit for Office of Management and Budget (OMB) review, a request for an emergency extension of currently approved information collection requests which will expire on February 28, 2015. The extension is being sought to evaluate, along with our partners, the need for and scope of the existing instruments. The Agency expects that OMB will approve these emergency extensions by February 28, 2015, and approve any revised instruments (after appropriate notice and public comment periods) by June 30, 2015.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT: Peter Williams, Director, U.S. Institute for Environmental Conflict Resolution, 130 South Scott Avenue, Tucson, Arizona 85701, Fax: 520–670–5530, Phone: 520–901–8513, Email: *williams@ecr.gov*. When submitting comments, reference this Federal Register Notice.

SUPPLEMENTARY INFORMATION:

Abstract: The U.S. Institute is a non-partisan federal program established by Congress to provide impartial assistance to parties in resolving environmental, natural resource, and public lands conflicts involving the U.S. government, as well as training to increase capacity within the federal government to resolve such issues. The instruments for which emergency extensions are requested are used to evaluate the efficacy and value of the assistance in resolving environmental conflicts and the training provided by the U.S. Institute to enhance resolution of environmental conflicts.

INFORMATION ON INDIVIDUAL ICRS FOR WHICH AN EMERGENCY EXTENSION IS REQUESTED:

1. Conflict Assessment Services

Type of Information Collection: Currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Conflict Assessment Services (two instruments).
OMB Number: 3320–0003.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 430.
Total Annual Responses: 430.
Average Burden per Response: 5 minutes.
Total Annual Hours: 36.00.
Total Burden Cost: $1,700.00.

2. Training Services

Type of Information Collection: Currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Training Services.
OMB Number: 3320–0006.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 1,560.
Total Annual Responses: 1,560.
Average Burden per Response: 5.5 minutes.
Total Annual Hours: 143.
Total Burden Cost: $6,721.

3. Facilitated Meeting Services

Type of Information Collection: Currently Approved Collection.
Title of Information Collection: Program Evaluation Instruments for Facilitated Meeting Services.
OMB Number: 3320–0007.
Affected Public: Individuals or households, business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 3,000.
Total Annual Responses: 3,000.
Average Burden per Response: 5 minutes.
Total Annual Hours: 252.
Total Burden Cost: $11,752.

4. Roster Program Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Roster Program Services.
OMB Number: 3320–0005.
Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 550.
Total Annual Responses: 550.
Average Burden per Response: 3.5 minutes.
Total Annual Hours: 32.
Total Burden Cost: $1,488.

5. Program Support Services

Type of Information Collection: Revision of a currently approved collection.
Title of Information Collection: Program Evaluation Instruments for Program Support Services.
OMB Number: 3320–0009.
Affected Public: Business or other for-profit, not-for-profit, federal and state, local or tribal government.
Frequency: One time.
Annual Number of Respondents: 40.
Total Annual Responses: 40.
Average Burden per Response: 5.
Total Annual Hours: 3.33.
Total Burden Cost: $157.

(Authority: 20 U.S.C. 5601–5609).

Dated: December 16, 2014.

Philip Lemanski,

Executive Director, Udall Foundation.

[FR Doc. 2014–30145 Filed 12–23–14; 8:45 am]

BILLING CODE 6820–FN–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–018]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of Proposed Information Collection and Request for Comments.

SUMMARY: NARA is giving public notice that the agency proposes to reinstate the information collection described in this notice, which the National Historical Publications and Records Commission (NHPRC) uses in its grant program. NARA invites the public to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 23, 2015 to be assured of consideration.

ADDRESSES: Comments should be sent by mail to Paperwork Reduction Act

Comments (ISSD), Room 4400; National Archives and Records Administration; 8601 Adelphi Rd; College Park, MD 20740–6001, by fax to 301–713–7409, or by email to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Please direct requests for additional information or copies of the proposed information collections and supporting statements to Tamee Fechhelm, by telephone at 301–837–1694, or by fax at 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. NARA will summarize and include submitted comments in our request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Historical Publications and Records Commission (NHPRC) Grant Program, Budget Form, and Instructions.

OMB number: 3095–0013.

Agency form number: NA Form 17001.

Type of review: Reinstatement of a previously cleared information collection.

Affected public: Nonprofit organizations and institutions, state and local government agencies, and Federally-acknowledged or state-recognized Native American tribes or groups, who apply for and receive NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.

Estimated number of respondents: 144 per year submit applications; approximately 45 grantees need to submit revised budgets.

Estimated time per response: 10 hours per application; 5 hours per revised budget.

Frequency of response: On occasion for the application; as needed for revised budget. Currently, the NHPRC considers grant applications 2 times per year. Respondents usually submit no more than one application per year, and, for those who need to submit revised budgets, only one revised budget per year.

Estimated total annual burden hours: 1,665 hours.

Abstract: The NHPRC posts grant announcements to their Web site and to grants.gov (*www.grants.gov*), where the information will be specific to the grant opportunity named. The basic information collection remains the same. The NA Form 17001 is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support.

Dated: December 18, 2014.

Leslie Johnston,

Acting Executive for Information Services/ CIO.

[FR Doc. 2014–30242 Filed 12–23–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Mathematical and Physical Sciences (#66).

DATE/TIME: January 23, 2015: 9:00 a.m. to 5:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

To help facilitate your entry into the building, contact Sara Dwyer (*sdwyer@nsf.gov*). Your request should be received on or prior to January 16, 2014.

Virtual attendance will be supported. For detailed instructions, visit the meeting Web site at *http://www.nsf.gov/events/event_summ.jsp?cntn_id=130169&org=MPS.*

TYPE OF MEETING: OPEN, VIRTUAL.

CONTACT PERSON: Eduardo Misawa, National Science Foundation, 4201 Wilson Boulevard, Suite 1005, Arlington, Virginia 22230, 703–292–5353 and Sara Dwyer, National Science Foundation, 4201 Wilson Boulevard, Suite 1005, Arlington, Virginia 22230, 703–292–4934.

Minutes*:* Meeting minutes and other information may be obtained from the Staff Associate and MPSAC Designated Federal Officer at the above address or the Web site at *http://www.nsf.gov/mps/advisory.jsp.*

PURPOSE OF MEETING: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning research in mathematics and physical sciences.

Agenda

- State of the Directorate for Mathematical and Physical Sciences (MPS): Challenges and Opportunities
- Reports from current subcommittees
- Public-Private Partnerships
- Report from MPS Liaisons to NSF Advisory Committees

Dated: December 18, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–30038 Filed 12–23–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0182]

Agency Information Collection Activities: Submission for the Office of Management and Budget Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on August 28, 2014.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 54,

''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.''

3. *Current OMB approval number:* 3150–0155.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* There is a one-time application for any licensee wishing to renew the operating license for its nuclear power plant. There is a one-time requirement for each licensee with a renewed operating license to submit a letter documenting the completion of inspection and testing activities. All holders of renewed licenses must perform yearly record keeping.

6. *Who will be required or asked to report:* Commercial nuclear power plant licensees who wish to renew their operating licenses and holders of renewed licenses.

7. *An estimate of the number of annual responses:* 6.

8. *The estimated number of annual respondents:* 58 (52 recordkeepers + 6 responses (2 license renewal applications expected on average + 4 letters documenting the completion of inspection and testing activities expected on average)).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 220,340 hours (168,340 hours of reporting + 52,000 hours of recordkeeping).

10. *Abstract:* Part 54 of Title 10 of the *Code of Federal Regulations* (10 CFR), establishes license renewal requirements for commercial nuclear power plants and describes the information that licensees must submit to the NRC when applying for a license renewal. The application must contain information on how the licensee will manage the detrimental effects of age-related degradation on certain plant systems, structures, and components so as to continue the plant's safe operation during the renewal term. The NRC needs this information to determine whether the licensee's actions will be effective in assuring the plants' continued safe operation during the period of extended operation.

Holders of renewed licenses must retain in an auditable and retrievable form, for the term of the renewed operating license, all information and documentation required to document compliance with 10 CFR part 54. The NRC needs access to this information for continuing effective regulatory oversight.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 23, 2015. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at 202–395–7315.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 18th day of December 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–30101 Filed 12–23–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0215]

Agency Information Collection Activities: Submission for the Office of Management and Budget Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on October 6, 2014.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Title 10 of the Code of Federal Regulations (10 CFR) Part 73, ''Physical Protection of Plants and Materials.

3. *Current OMB approval number:* 3150–0002.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* On occasion, with the exception of the initial submittal of revised Cyber Security Plans, Security Plans, Safeguards Contingency Plans, and Security Training and Qualification Plans. Required reports are submitted and evaluated as events occur.

6. *Who will be required or asked to report:* Nuclear power reactor licensees, licensed under 10 CFR part 50 or 52 who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material; actively decommissioning reactor licensees, Category I fuel facilities; Category II and III facilities; nonpower reactors (research and test reactors); 262 other nuclear materials licensees; and 200 state and Tribal contacts.

7. *An estimate of the number of annual responses:* 154,748.

8. *The estimated number of annual respondents:* 581.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 543,443 (21,255 hours reporting + 486,746 hours recordkeeping + 35,442 hours third party disclosure).

10. *Abstract:* The NRC regulations in 10 CFR part 73 prescribe requirements to establish and maintain a physical protection system and security organization with capabilities for protection of (1) Special nuclear material (SNM) at fixed sites, (2) SNM in transit, and (3) plants in which SNM is used. The objective is to ensure that activities involving special nuclear material are consistent with interests of common defense and security and that these activities do not constitute an unreasonable risk to public health and safety. The information in the reports and records submitted by licensees is used by the NRC staff to ensure that the health and safety of the public and the environment are protected, and licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's

Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 23, 2015. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Vlad Dorjets, Desk Officer, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be emailed to *Vladik_Dorjets@omb.eop.gov* or submitted by telephone at (202) 395–7315.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 18th day of December, 2014.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–30098 Filed 12–23–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on January 13, 2015, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 13, 2015–8:30 a.m. Until 5:00 p.m.

The Subcommittee will review the final supplemental Safety Evaluation Report (SER) associated with the staff's review of the Final Safety Analysis Report (FSAR) for the Watts Bar Unit 2 Operating License Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 13, 2014 (79 FR59307–59308).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 17, 2014.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–30209 Filed 12–23–14; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before January 23, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA/Privacy Act Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692–1236, or email at *pcfr@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: Peace Corps uses the confidential reference form in order to learn from someone, who knows a volunteer applicant and his or her background, whether the applicant possesses the necessary characteristics and skills to serve as a Volunteer.

OMB Control Number: 0420–0006.

Title: Peace Corps Confidential Reference Form.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals.

Respondents' Obligation to Reply: Voluntary.

Burden to the Public:

a. Average Number of Annual Applicants (complete the application process): 20,000.

b. Number of reference required per applicant: 2.

c. Estimated Number of reference forms received: 40,000.

d. Frequency of response: One time.

e. Completion time: 10 minutes.

f. Annual burden hours: 6,667.

General Description of Collection: The Peace Corps Confidential Reference Form provides information concerning an applicant's skills and character from people who are familiar with the applicant, such information exist nowhere else. The Placement team, in the Office of Volunteer Recruitment and Selection, uses the Peace Corps Confidential Reference Form as an integral part of the selection process to determine whether an applicant is likely to succeed as a Peace Corps volunteer.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC, on December 16, 2014.

Denora Miller,

FOIA/Privacy Act Officer, Management.

[FR Doc. 2014–30187 Filed 12–23–14; 8:45 am]

BILLING CODE 6051–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: January 7, 2015, at 2 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, January 7, 2015, at 2 p.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC, 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2014–30140 Filed 12–22–14; 11:15 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 24, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 24 to Competitive Product List*. Documents are available at *www.prc.gov,* Docket Nos. MC2015–21, CP2015–26.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–30143 Filed 12–23–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 24, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 18, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 105 to Competitive Product List*. Documents are available at *www.prc.gov,* Docket Nos. MC2015–20, CP2015–25.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–30139 Filed 12–23–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31385; 812–14345]

Forum Funds II and Acuitas Investments, LLC; Notice of Application

December 18, 2014.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements with Wholly-Owned Sub-Advisers (as defined below) and Non-Affiliated Sub-Advisers (as defined below) without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Forum Funds II ("Trust") and Acuitas Investments, LLC ("Adviser").

DATES: Filing Dates: The application was filed August 12, 2014, and amended on September 19, 2014, November 18, 2014, November 21, 2014 and December 16, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street

NE., Washington, DC 20549–1090. Applicants: Trust, Three Canal Plaza, Suite 600, Portland, ME 04101; Adviser, 520 Pike Street, Suite 1221, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Attorney Adviser, at (202) 551–8658, or Daniele Marchesani, Branch Chief, at (202) 551–6747 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust offers one or more series of shares (each, a ''Series''). Each Subadvised Series (as defined below) has its own investment objectives, policies and restrictions and may offer one or more classes of shares that are subject to different expenses.

2. The Adviser, a limited liability company organized under the laws of the state of Washington, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

3. Applicants request an order to permit the Adviser, subject to the approval of the Board, including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Series or the Adviser (''Independent Board Members''), to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers,[1] and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[2] Applicants request that the relief apply to named applicants, as well as any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser, uses the multi-manager structure as described in the application, and complies with the terms and conditions of the application (''Subadvised Series'').[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

4. Each Subadvised Series has, or will have, as its investment adviser, the Adviser, its successors, or an entity controlling, controlled by or under common control with the Adviser or its successors (included in the term, ''Adviser''). The Adviser will serve as investment adviser to each Subadvised Series pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement''). The Investment Management Agreement for each Series will be approved by the board of trustees of the Trust (''Board''),[4] including a majority of the Independent Board Members, and by the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreement comply with section 15(a) of the Act.

5. Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the Board, provides continuous investment management of the assets of each Series. The Adviser periodically reviews each Series' investment policies and strategies, and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the Investment Management Agreement, the Adviser receives an investment management fee from that Series. The Investment Management Agreement provides that the Adviser may, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisers.

6. Pursuant to the Investment Management Agreement, the Adviser continues to have overall responsibility for the management and investment of the assets of each Subadvised Series. The Adviser's responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.

7. The Adviser may enter into sub-advisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act. Any Sub-Advisory Agreements in effect at the time the Subadvised Series commences their public offerings of securities will have been approved by the Board, including a majority of the Independent Board Members, and the initial shareholders of the applicable Subadvised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the Board, determine the securities and other investments to be purchased, sold or entered into by a Subadvised Series' portfolio or a portion thereof, and will place orders with brokers or dealers that they select. The Adviser compensates each Sub-Adviser out of the fee paid to the Adviser under the Investment Management Agreement.

8. If the requested order is granted, the Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days

[1] A ''Sub-Adviser'' is (a) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Series, or (b) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (a) and (b) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (c) an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Series (each, a ''Non-Affiliated Sub-Adviser'' and collectively, the ''Non-Affiliated Sub-Advisers''). Each Sub-Adviser will be registered with the Commission under the Advisers Act or not subject to such registration.

[2] Shareholder approval will continue to be required for any other sub-adviser changes and material amendments to an existing Sub-Advisory Agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[3] For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a sub-adviser, the name of the Adviser, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the sub-adviser.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series, if different.

after a new Sub-Adviser is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [5] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

9. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers, (b) the aggregate fees paid to Non-Affiliated Sub-Advisers, and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Subadvised Series to include only the Aggregate Fee Disclosure. All other items required by section 6–07(2)(a), (b), and (c) of Regulation S–X will be disclosed.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser (except as modified to permit Aggregate Fee Disclosure as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' a description of the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that the Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, and by the shareholders of the relevant Series in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreement.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other

investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions: [6]

1. Before a Subadvised Series may rely on the order requested in the Application, the operation of the Subadvised Series in the manner described in this Application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to this Application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in this Application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Adviser will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Series will not make any Ineligible Sub-Adviser Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for an Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser to a Subadvised Series, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or the Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Board Member or officer of a Subadvised Series, or partner, director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity, other than a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

12. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the Application, the requested order will expire on the effective date of that rule.

14. Any new Sub-Advisory Agreement or any amendment to a Subadvised Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Series will be submitted to the Subadvised Series' shareholders for approval.

[6] Applicants will comply with conditions 7, 8, 9 and 12 only if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30129 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31386; 812–14344]

Forum Funds II and CVR Portfolio Funds LLC; Notice of Application

December 18, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend sub-advisory agreements with Wholly-Owned Sub-Advisers (as defined below) and Non-Affiliated Sub-Advisers (as defined below) without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Forum Funds II (''Trust'') and CVR Portfolio Funds LLC (''Adviser'').

DATES: *Filing Dates:* The application was filed August 12, 2014, and amended on September 19, 2014, November 18, 2014, November 21, 2014 and December 16, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 2015, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Trust, Three Canal Plaza, Suite 600, Portland, ME 04101; Adviser, One Bromfield Street, Suite 5100, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Kaitlin C. Bottock, Attorney Adviser, at (202) 551–8658, or Daniele Marchesani, Branch Chief, at (202) 551–6747 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust offers one or more series of shares (each, a ''Series''). Each Subadvised Series (as defined below) has its own investment objectives, policies and restrictions and may offer one or more classes of shares that are subject to different expenses.

2. The Adviser, a limited liability company organized under the laws of the state of Delaware, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').

3. Applicants request an order to permit the Adviser, subject to the approval of the Board, including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Series or the Adviser (''Independent Board Members''), to, without obtaining shareholder approval: (i) Select Sub-Advisers to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisers,[1] and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisers.[2] Applicants request that the relief apply to named applicants, as well as any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Adviser, uses the multi-manager structure as described in the application, and complies with the terms and conditions of the application (''Subadvised Series'').[3] The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

4. Each Subadvised Series has, or will have, as its investment adviser, the Adviser, its successors, or an entity controlling, controlled by or under common control with the Adviser or its successors (included in the term, ''Adviser''). The Adviser will serve as investment adviser to each Subadvised Series pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement''). The Investment Management Agreement for each Series will be approved by the board of trustees of the Trust (''Board''),[4] including a majority of the Independent Board Members, and by the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreement comply with section 15(a) of the Act.

5. Under the terms of the Investment Management Agreement, the Adviser, subject to the supervision of the Board, provides continuous investment management of the assets of each Series.

[1] A ''Sub-Adviser'' is (a) an indirect or direct ''wholly owned subsidiary'' (as such term is defined in the Act) of the Adviser for that Series, or (b) a sister company of the Adviser for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Adviser (each of (a) and (b) a ''Wholly-Owned Sub-Adviser'' and collectively, the ''Wholly-Owned Sub-Advisers''), or (c) an investment sub-adviser for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series or the Adviser, except to the extent that an affiliation arises solely because the sub-adviser serves as a sub-adviser to one or more Series (each, a ''Non-Affiliated Sub-Adviser'' and collectively, the ''Non-Affiliated Sub-Advisers''). Each Sub-Adviser will be registered with the Commission under the Advisers Act or not subject to such registration.

[2] Shareholder approval will continue to be required for any other sub-adviser changes and material amendments to an existing Sub-Advisory Agreement with any sub-adviser other than a Non-Affiliated Sub-Adviser or a Wholly-Owned Sub-Adviser (all such changes referred to as ''Ineligible Sub-Adviser Changes'').

[3] For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a sub-adviser, the name of the Adviser, or a trademark or trade name that is owned by or publicly used to identify that Adviser, will precede the name of the sub-adviser.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series, if different.

The Adviser periodically reviews each Series' investment policies and strategies, and based on the need of a particular Series may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the Investment Management Agreement, the Adviser receives an investment management fee from that Series. The Investment Management Agreement provides that the Adviser may, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisers.

6. Pursuant to the Investment Management Agreement, the Adviser continues to have overall responsibility for the management and investment of the assets of each Subadvised Series. The Adviser's responsibilities include recommending the removal or replacement of Sub-Advisers, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Adviser and reallocating those assets as necessary from time to time.

7. The Adviser may enter into sub-advisory agreements with various Sub-Advisers (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement comply fully with the requirements of section 15(a) of the Act. Any Sub-Advisory Agreements in effect at the time the Subadvised Series commences their public offerings of securities will have been approved by the Board, including a majority of the Independent Board Members, and the initial shareholders of the applicable Subadvised Series in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisers, subject to the supervision of the Adviser and oversight of the Board, determine the securities and other investments to be purchased, sold or entered into by a Subadvised Series' portfolio or a portion thereof, and will place orders with brokers or dealers that they select. The Adviser compensates each Sub-Adviser out of the fee paid to the Adviser under the Investment Management Agreement.

8. If the requested order is granted, the Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Adviser is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [5] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

9. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Adviser to each Sub-Adviser. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers, (b) the aggregate fees paid to Non-Affiliated Sub-Advisers, and (c) the fee paid to each Affiliated Sub-Adviser (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Subadvised Series to include only the Aggregate Fee Disclosure. All other items required by section 6–07(2)(a), (b), and (c) of Regulation S–X will be disclosed.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser (except as modified to permit Aggregate Fee Disclosure as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' a description of the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or

classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Series are paying the Adviser—the selection, supervision and evaluation of the Sub-Advisers—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that the Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, and by the shareholders of the relevant Series in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreement.

7. Applicants assert that disclosure of the individual fees that the Adviser would pay to the Sub-Advisers of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisers are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Adviser will be fully disclosed and therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisers to negotiate lower sub-advisory fees with the Adviser if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisers, and provide that shareholders are informed when new Sub-Advisers are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:[6]

1. Before a Subadvised Series may rely on the order requested in the Application, the operation of the Subadvised Series in the manner described in this Application, including the hiring of Wholly-Owned Sub-Advisers, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to this Application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in this Application. Each prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Adviser will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Adviser will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisers to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisers comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Adviser will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisers; and (b) monitor and evaluate the performance of Sub-Advisers.

4. A Subadvised Series will not make any Ineligible Sub-Adviser Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

8. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability

[6] Applicants will comply with conditions 7, 8, 9 and 12 only if they rely on the relief that would allow them to provide Aggregate Fee Disclosure.

of the Adviser on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-adviser during the applicable quarter.

9. Whenever a sub-adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

10. Whenever a sub-adviser change is proposed for an Affiliated Sub-Adviser or Wholly-Owned Sub-Adviser to a Subadvised Series, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Sub-Adviser or the Wholly-Owned Sub-Adviser derives an inappropriate advantage.

11. No Board Member or officer of a Subadvised Series, or partner, director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser, except for (i) ownership of interests in the Adviser or any entity, other than a Wholly-Owned Sub-Adviser, that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser.

12. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the Application, the requested order will expire on the effective date of that rule.

14. Any new Sub-Advisory Agreement or any amendment to a Subadvised Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Series will be submitted to the Subadvised Series' shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30130 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31384; 812–13961]

SSgA Funds Management, Inc., et al.; Notice of Application

December 18, 2014.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: SSgA Funds Management, Inc. (''SSgA FM'') and SPDR Series Trust, SPDR Index Shares Funds, SSgA Master Trust and SSgA Active Trust (each, a ''Trust,'' and collectively, the ''Trusts,'' and together with SSgA FM, ''Applicants'').

DATES: *Filing Dates:* The application was filed on September 16, 2011, and amended on March 13, 2012, August 18, 2014 and December 12, 2014. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 12, 2015, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Joshua A. Weinberg, Esq., State Street Global Advisors, State Street Financial Center, One Lincoln Street, Boston, MA 02111.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a business trust under the laws of the Commonwealth of Massachusetts and registered under the Act as an open-end management investment company. Each Trust will offer multiple series (each a ''Fund''),[1] some of which currently operate, or may in the future operate, as exchange-traded funds.[2] SSgA FM, a Massachusetts corporation, is a wholly-owned subsidiary of State Street Corporation. SSgA FM is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the

[1] Currently, certain series of SSgA Active Trust are part of a Master-Feeder Structure as Feeder Funds investing in corresponding Master Funds that are series of SSgA Master Trust. A ''Master-Feeder Structure'' involves a ''Feeder Fund'' investing in a corresponding ''Master Fund.''

[2] Applicants also request relief with respect to future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by SSgA FM or an entity controlling, controlled by, or under common control with SSgA FM (collectively, the ''Adviser'') or its successors; (b) uses the multi-manager structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of the application (included in the term ''Funds''). Every entity that currently intends to rely on the requested order is named as an Applicant. For purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Adviser, or a trademark or trade name that is owned or licensed by the Adviser, will precede the name of the Sub-Adviser.

''Advisers Act''). SSgA FM serves as the investment adviser to each of the Funds pursuant to a separate investment advisory agreement (each, an ''Investment Advisory Agreement'' and collectively, the ''Investment Advisory Agreements'') with the relevant Trust. Each Investment Advisory Agreement was approved by the Trust's board of trustees (the ''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (for any Board, the ''Independent Trustees''), and by the initial shareholder of each Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

2. Under the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, manages the investment operations and determines the composition of the portfolio of each Fund, including the purchase, retention and disposition of the securities and other instruments held by the Fund. For its services to each Fund, the Adviser receives an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement computed as a percentage of the Fund's average daily net assets. Each Investment Advisory Agreement also permits the Adviser, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Fund (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of a Fund to one or more subadvisers (''Sub-Advisers''). The Adviser has entered into subadvisory agreements (''Sub-Advisory Agreements'') with various Sub-Advisers to provide investment advisory services to certain Funds.[4] Each Sub-Adviser is, and each future Sub-Adviser will be, an ''investment adviser'' as defined in section 2(a)(20) of the Act as well as registered with the Commission as an investment adviser under the Advisers Act or exempt from such registration. The Adviser will evaluate and recommend Sub-Advisers to the Board and will monitor and evaluate each Sub-Adviser's investment programs, performance and compliance. The Adviser will recommend to the Board whether Sub-Advisory Agreements should be renewed, modified or terminated. The Adviser currently compensates each Sub-Adviser out of the fee paid by a Fund to the Adviser under the Investment Advisory Agreement. However, Applicants note that future arrangements with one or more Sub-Advisers may be implemented whereby a Fund will be responsible for paying subadvisory fees directly to the Sub-Adviser.

3. Applicants request an order (''Order'') to permit the Adviser, subject to Board approval, to select certain Sub-Advisers to manage all or a portion of the assets of a Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund, any Feeder Fund, or the Adviser, other than by reason of serving as a Sub-Adviser to a Fund (''Affiliated Sub-Adviser'').

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Adviser or a Fund to each Sub-Adviser. Applicants seek an order to permit each Fund to disclose (as a dollar amount and a percentage of a Fund's net assets) only: (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, the ''Aggregate Fee Disclosure''). A Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

5. The Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Fund, that Fund will send its shareholders[5] either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[6] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

[3] The term ''Board'' also includes the board of trustees or directors of a future Fund, if different.

[4] Currently, Nuveen Asset Management LLC, GSO/Blackstone Debt Funds Management LLC, and Massachusetts Financial Services Company serve as Sub-Advisers to certain Funds.

[5] If the Fund utilizing the Manager of Managers Structure is a Master Fund, for purposes of the Modified Notice and Access Procedures, 'shareholders' include both the shareholders of the applicable Master Fund and the shareholders of its Feeder Funds.

[6] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi manager Information Statement may be obtained, without charge, by contacting the Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Sub-Advisers who are best suited to achieve the Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Adviser is substantially equivalent to the role of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds, and may preclude the Fund from acting promptly when the Board and the Adviser believe that a change would benefit a Fund and its shareholders. Applicants note that the Investment Advisory Agreement and any Sub-Advisory Agreement with an Affiliated Sub-Adviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Adviser's ability to negotiate the fees paid to Sub-Advisers. Applicants state that the Adviser may be able to negotiate rates that are below a Sub-Adviser's ''posted'' amounts, if the Adviser is not required to disclose the Sub-Advisers' fees to the public. Applicants submit that the requested relief will encourage Sub-Advisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions: [7]

1. Before a Fund may rely on the Order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, which in the case of a Master Fund will include voting instructions provided by shareholders of the Feeder Funds investing in such Master Fund or other voting arrangements that comply with section 12(d)(1)(E)(iii)(aa) of the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering the Fund's shares to the public.

2. Each Fund that relies on the Order, and in the case of Master Fund relying on the Order, each Feeder Fund investing in such Master Fund, will disclose in its prospectus the existence, substance, and effect of any Order granted pursuant to the application. Each Fund relying on the Order (and any such Feeder Fund) will hold itself out to the public as utilizing the Manager of Managers Structure. Each prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. Funds will inform shareholders, and if the Fund relying on the Order is a Master Fund, shareholders of any Feeder Funds of the hiring of a new Sub-Adviser within 90 days after the hiring of the new Sub-Adviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. Whenever a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of such Fund and its shareholders, and if the Fund relying on the Order is a Master Fund, the best interests of any applicable Feeder Funds and their respective shareholders, and does not involve a conflict of interest from which the Adviser or an Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund relying on the Order, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval by the Board, will: (i) Set the Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to provide purchase and sale recommendations to the Adviser or investment advice to all or a portion of the Fund's assets; (iii) allocate and, when appropriate, reallocate the Fund's assets among multiple Sub-Advisers; (iv) monitor and evaluate the Sub-Advisers' performance; and (v) implement procedures reasonably designed to ensure that Sub-Adviser(s) comply with the relevant Fund's investment objectives, policies and restrictions.

8. (a) No trustee or officer of a Fund relying on the Order or a Controlling Feeder Fund or director or officer of the Adviser will own, directly or indirectly, any interest in a Sub-Adviser and (b) no trustee or officer of an Affiliated Feeder Fund will own, directly or indirectly, any interest in a Sub-Adviser of the corresponding Master Fund; provided, however, that the foregoing limitations shall not apply to: (x) Interests owned through a pooled investment vehicle that is not controlled by such person; (y) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by or is under common control with a Sub-Adviser; or, (z) solely with respect to clause (a) above, ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser.[8]

9. Whenever the Board approves a Sub-Advisory Agreement for a Fund, the Board, including a majority of the Independent Trustees, will make a separate finding that such approval is being made free of any influence from any other Fund or Feeder Fund or its respective trustees and officers. The finding required by this condition will

[7] Applicants will only comply with conditions 12, 13, 14 and 15 with respect to those series that rely on the relief that would allow them to provide Aggregate Fee Disclosure. Each Trust will comply with condition 13 if any series of the respective Trust provides Aggregate Fee Disclosure in its registration statement.

[8] For purposes of this condition, (i) a ''Controlling Feeder Fund'' is a Feeder Fund investing in a Master Fund relying on the Order that controls such Master Fund, within the meaning of section 2(a)(9) of the Act; and (ii) an ''Affiliated Feeder Fund'' is a Feeder Fund investing in a Master Fund relying on the Order that is either (a) in the same ''group of investment companies'' (within the meaning of section 12(d)(1)(G)(ii) of the Act) as any Fund; (b) an affiliated person (within the meaning of section 2(a)(3) of the Act) or an affiliated person of such an affiliated person of any Fund or of the Adviser; or (c) advised by the Adviser.

be documented in the minutes of the meeting of the Board, together with the trustees' basis for the finding.

10. Any new Sub-Advisory Agreement or any amendment to an existing Investment Advisory Agreement or Sub-Advisory Agreement for a Fund relying on the Order that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Fund will be submitted to the Fund's shareholders for approval.

11. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the Order, the requested Order will expire on the effective date of that rule.

12. Each Fund relying on the Order and any Feeder Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

14. The Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per-Fund basis for each Fund relying on the Order. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

15. Whenever a Sub-Adviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30128 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73881; File No. SR–BYX–2014–040]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b 4 thereunder,[2] notice is hereby given that on December 12, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to make several non-substantive amendments to the fee schedule applicable to Members [5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of clarifying, non-substantive changes to its fee schedule in order to convert the existing fee schedule into a chart format, including eliminating certain redundancies from and providing additional clarity to the language in the existing fee schedule. The Exchange believes that these changes will provide greater transparency to Members about how the Exchange assesses fees and calculates rebates, as well as allowing Members to more easily validate their bills on a monthly basis. The Exchange notes that none of these changes substantively amend any fee or rebate, nor do they alter the manner in which the Exchange assesses fees or calculates rebates. Specifically, the Exchange is proposing the following:

- To make clear that rebates are indicated by parentheses.
- To state the following: The rates listed in the Standard Rates table apply unless a Member's transaction is assigned a fee code other than a standard fee code. If a Member's transaction is assigned a fee code other than a standard fee code, the rates listed in the Fee Codes table will apply. Footnotes provide further explanatory text or, where annotated to fee codes, indicate variable rate changes, provided the conditions in the footnote are met. Unless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.
- To add a section and chart titled ''Standard Rates,'' which will include the standard fees and rebates for securities priced both at or above $1.00 and below $1.00 for adding liquidity, removing liquidity, and routing and removing liquidity from another venue as well as the standard fee codes associated with these rates.
- To add a section titled ''Fee Codes and Associated Fees,'' which will include the fee or rebate, the fee code, and a description for each possible execution that could occur on the Exchange or on another venue.
- To add a section titled ''Definitions,'' which will include definitions that are defined in the current fee schedule. The Exchange also notes that ''Other Non-Displayed Liquidity'' will not be included in ''Definitions'' because, as proposed, it is captured in the section titled ''Fee Codes and Associated Fees.'' These

include the definitions listed below, which are identical to definitions contained on the Exchange's current fee schedule. All references to ''per share'' mean ''per share executed.'' ''ADAV'' means average daily volume calculated as the number of shares added per day on a monthly basis. The Exchange excludes from its calculation of ADAV shares added on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). Routed shares are not included in ADAV calculation. With prior notice to the Exchange, a Member may aggregate ADAV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD). ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

- To add a section titled ''General Notes,'' that will include the following notes: Unless otherwise indicated, rebates and charges for adding, removing or routing liquidity are listed as per share rebates and charges; the Exchange notes that to the extent a Member does not qualify for any of the tiers listed below, the rates listed in the above section titled ''Fee Codes and Associated Fees'' will apply; to the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply; and variable rates provided by tiers apply only to executions in securities priced at or above $1.00.
- To add a series of footnotes describing already existing enhanced rebates including Add Volume Tier, Mid-Point Peg Tier, and NBBO Setter Tier that are not covered in the Fee Codes and Associated Fees section described above.
- To add a series of footnotes describing all fees and rebates for securities priced below $1.00 that either execute on the Exchange or another venue, to the extent applicable.
- To add new sections and charts titled ''Logical Port Fees'' and ''Market Data Fees,'' which, other than being in chart form, will be identical to the current fee schedule.
- To eliminate the lead-in text that reads ''The following is the Schedule of Fees (pursuant to Rule 15.1(a) and (c)) for BATS Y-Exchange, Inc. (''BYX Exchange'' or ''BYX'').''

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with sections 6(b)(4) of the Act and 6(b)(5) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes are reasonable and equitable because they are non-substantive and the Exchange is not changing any fees or rebates that apply to trading activity on the Exchange or routed executions. Further, the changes are designed to make the fee schedule easier to read and for Members to validate the bills that they receive from the Exchange. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members, and again, the Exchange is not making any changes to existing fees and rebates. Finally, the Exchange believes that the proposed fee schedule will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes that the changes will both make the fee schedule easier to read and simultaneously provide Members with an easier way to validate their bills on a monthly basis, both of which the Exchange believes are important components of customer service and which will allow the Exchange to better compete for order flow. The Exchange reiterates that the changes are only to the format of the fee schedule and are entirely non-substantive. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the [sic] deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–040 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2014–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–040 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30124 Filed 12–23–14; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73882; File No. SR–NYSEMKT–2014–101]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 342—Equities To Remove the Three Years' Experience Requirement for Supervisory Personnel and To Add Supplementary Material to Rule 3110—Equities Stating That Supervisors Must Reasonably Discharge Their Supervisory Duties and Obligations

December 18, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2014, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Exchange Act Rule 19b–4(f)(6), which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 342—Equities (''Rule 342'') to remove the three years' experience requirement for supervisory personnel and to add supplementary material to NYSE MKT Rule 3110—Equities (''Rule 3110'') stating that supervisors must reasonably discharge their supervisory duties and obligations. 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 342 to remove the three years' experience requirement for supervisory personnel. The Exchange also proposes to add supplementary material to Rule 3110 to further clarify that supervisors must reasonably discharge their supervisory duties and obligations.

Rule 342 (Compliance Supervisors)

As part of the Exchange's efforts to harmonize its rules concerning supervision with those of the Financial Industry Regulatory Authority (''FINRA''), the Exchange recently amended Rule 342 by deleting elements of the rule relating to general supervision and focusing the rule on requirements regarding qualifications and exam requirements for individuals with supervisory responsibilities.[3] As part of those amendments, the Exchange incorporated the following requirements for supervisory personnel into Rule 342(a) contained in the Interpretation to New York Stock Exchange (''NYSE'') Rule 342:

• Every branch office or sales manager must have at least three years' experience as a registered representative or substantial experience in a related sales or managerial position (the new rule provided examples of roles that would qualify as a related sales or managerial position); and

• In order to qualify as a supervisory person, a principal executive should have at least three years' experience as a registered representative unless granted an exception.

The Exchange proposes to delete these requirements from Rule 342(a) as inconsistent with prior amendments to NYSE Rule 342 on which the Exchange's rule is based.[4] Specifically,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 73640 (Nov. 19, 2014), 79 FR 70237 (Nov. 25, 2014) (SR–NYSEMKT–2014–93) (''Supervision Filing'').

[4] The Exchange's NYSE affiliate has also submitted a proposed rule change to amend NYSE Rule 342 to delete the requirements incorporated from the related NYSE Interpretation that every branch office or sales manager must have at least three years' experience as a registered representative or substantial experience in a related

effective September 12, 2008, the NYSE amended its Rule 342 and its related Interpretation to eliminate the prescribed three-year record requirement for supervisory personnel and conform NYSE Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D).[5] In the Supervision Filing, the Exchange inadvertently re-introduced the standards from the formerly deleted NYSE Interpretation to its Rule 342. Because the re-introduction of the three-year experience requirement for supervisory personnel was inadvertent and inconsistent with the harmonization effectuated in 2008, the Exchange proposes to delete this text from Rule 342(a).

Rule 3110 (Supervision)

In the Supervision Filing, the Exchange also adopted new Rule 3110, which is based on FINRA Rule 3110.[6] New Rule 3110(a) covers supervisory systems and requires member organizations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. Under Rule 3110, final responsibility for proper supervision rests with the member organization. While the Exchange believes that under Rule 3110 both member organizations and individual supervisors at member organizations may be liable for failing to reasonably discharge their duties and obligations with supervision and control of those employees under their supervision, for the avoidance of doubt, the Exchange proposes to add Supplementary Material .16 to Rule 3110 providing that individuals in charge of a group of employees must reasonably discharge their duties and obligations with respect to supervision and control of those employees related to the business of their employer and compliance with securities laws and regulations and Exchange rules.[7]

sales or managerial position and must pass the Series 9/10. *See* SR–NYSE–2014–66.

[5] *See* Exchange Act Release No. 58549 (Sept. 15, 2008), 73 FR 54444 (Sept. 19, 2008) (SR–NYSE–2008–80).

[6] *See* Supervision Filing, *supra,* n. 4.

[7] FINRA Rule 0140 provides that FINRA's rules apply to all members and persons associated with a member, and that persons associated with a member have the same duties and obligations as a member under FINRA's rules. Under FINRA Rule 0140, supervisors associated with a member are subject to the requirements of FINRA Rule 3110. The Exchange does not have a rule comparable to FINRA Rule 0140. The proposed amendment further clarifies that Rule 3110 applies to individual supervisors and thus promotes harmonization of the rule with Exchange rules and FINRA rules of similar purpose.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, the Exchange believes that removing the three-year experience requirement for supervisors, which was previously deleted from NYSE Rule 342 on which the Exchange's rule is based and inadvertently re-introduced, would remove impediments to and perfect the mechanism of a free and open market by eliminating a regulatory disparity between the supervisory rules of the Exchange and FINRA, thereby also further harmonizing those rules. Further, the Exchange believes that adding the proposed supplementary material to Rule 3110 emphasizing that individual supervisors shall reasonably discharge their supervisory duties and obligations would remove impediments to and perfect the mechanism of a free and open market because it would reduce potential confusion and provide transparency regarding the duties and obligations of individual supervisors under the Exchange's harmonized supervision rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing supervision, which would promote just and equitable principles of trade and help to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's rules concerning supervision.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

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

A proposed rule change filed under Exchange Act Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[11] However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.[12] The Exchange believes that the proposal qualifies for immediate effectiveness upon filing because it is a ''non-controversial'' rule change in accordance with Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Accordingly, the Exchange has asked that the Commission waive the 30-day operative delay so that the proposal becomes operative immediately upon filing.

The Exchange believes that the proposal is non-controversial because it raises no novel issues and is consistent with rules previously approved by the Commission. The Exchange states that the purpose of the proposed rule change is to eliminate requirements in the Exchange's rules previously deleted by the Exchange and to further conform the Exchange's supervision rules to those of FINRA. The Exchange believes that updating and adding transparency to the requirements governing individual supervisors would help to protect investors and would not significantly burden competition. More specifically, the Exchange believes that: (1) Members of both FINRA and the Exchange (''Dual Members'') are already subject to the requirement that individual supervisors reasonably discharge their supervisory duties and obligations; and (2) the proposed clarification does not represent a new standard for Exchange-only members, who were subject to the same standard under former Rule 342. Accordingly, the Exchange believes that these proposed rule changes are eligible

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

for immediately effective treatment under the Commission's current procedures for processing rule filings.[15]

The Commission believes that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. More specifically, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because enhanced transparency to the supervision obligations of individual supervisors will help members improve compliance with applicable securities laws, including rules governing sale practices. In addition, granting the waiver would allow the Exchange to immediately eliminate requirements in the Exchange's rules that were mistakenly reinserted after being previously deleted. For these reasons, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[17] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2014–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2014–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–101 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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[15] *See* Exchange Act Release No. 58092 (Jul. 3, 2008), 73 FR 40144 (Jul. 11, 2008) (concerning 17 CFR 200 and 241).

[16] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

In addition, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five (5) business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. *See* 17 CFR 240.19b–4(f)(6)(iii).

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73875; File No. SR–BATS–2014–068]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9(a)(2) and 11.18(e) of BATS Exchange, Inc.

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange's implementation of the Limit Up-Limit Down Plan, as defined below.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange's implementation of the Limit Up-Limit Down Plan, as defined below. The proposed change to the operation of BATS market orders is based on existing behavior of Market Orders available on EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'').[3]

Earlier this year, the Exchange and its affiliate, BATS Y-Exchange, Inc. (''BYX''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[4] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

Currently, BATS market orders can be executed on the Exchange or routed to other destinations but cannot be posted to the BATS Book. The proposed modification to the operation of a BATS Market Order would allow such orders to post to the BATS Book under certain limited circumstances to the extent such BATS Market Order is designated with a time-in-force of Day. Specifically, as proposed, a BATS market order that is not eligible for routing (*i.e.,* BATS Only) and contains a time-in-force of Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1) unless the reason that such BATS market order cannot be executed is because it is entered into the System and the NBO (NBB) is greater (less) than the Upper (Lower) Price Band, as such term is defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''), in which case such order will be posted by the System to the BATS Book and priced at the Upper (Lower) Price Band, and re-priced as set forth in Rule 11.18(e)(5)(B), which the Exchange proposes to amend as described below. Similarly, a BATS market order to sell with a time-in-force of Day that is marked short that cannot be executed because of the existence of a Short Sale Circuit Breaker pursuant to Regulation SHO will be posted by the System to the BATS Book subject to the price sliding process as set forth in Rule 11.9(g).

The Exchange also proposes to modify Rule 11.18(e)(5)(A), which describes the handling of BATS market orders and other orders that are not currently posted to the Exchange's order book when not executable pursuant to the Limit Up-Limit Down Plan. The Exchange proposes to make clear that a BATS market order that cannot be executed within the applicable Price Bands will be cancelled if it contains a time-in-force other than Day but if it maintains a time-in-force of Day that such an order will be posted and displayed at the applicable Price Band and re-priced to remain at such Price Band. Specifically, the Exchange proposes to state that a BATS market order to buy (sell) with a time-in-force of Day that is posted to the BATS Book and displayed at the Upper (Lower) Price Band will be re-priced and displayed at the Upper (Lower) Price Band if Price Bands move such that the price of the resting market order to buy (sell) would be above (below) the Upper (Lower) Price Band or if the Price Bands move such that the order is no longer posted and displayed at the most aggressive permissible price. The Exchange further proposes that the System shall re-price such displayed interest to the most aggressive permissible price until the order is executed in its entirety or cancelled.

The Exchange proposes to post to the BATS Book all BATS market orders with a time-in-force of Day in these circumstances (*i.e.,* when an execution would otherwise occur but cannot due to the application of Price Bands pursuant to the Limit Up-Limit Down Plan or due to a Regulation SHO Short Sale Circuit Breaker), because the sender of a market order typically expects an execution when such order is sent. In these circumstances although an execution could not occur, the Exchange believes that Users would prefer to have their orders posted to the Exchange's book in compliance with the Limit Up-Limit Down Plan and Regulation SHO to potentially receive a later execution.

A BATS market order will default to a time-in-force of Day unless otherwise specified by a User, however, Users that do not want their orders posted to the BATS Book in these circumstances can choose a different time-in-force, in which case their order will be cancelled back in such circumstances. A BATS market order that is not eligible for routing with a time-in-force other than Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1). Further, the Exchange proposes to make clear that BATS market orders that are designated as BATS Post Only are rejected.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act[5] and further the objectives of section 6(b)(5) of the Act[6] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The proposed rule change adds certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering across the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BYX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that may result in the execution of such orders when they would otherwise be cancelled and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. Therefore, the Exchange believes that the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system.

As explained elsewhere in this proposal, the proposed operation of BATS Market Orders with a time-in-force of Day is intended to allow such orders to post to the BATS Book, rather than cancel back to the User unexecuted, when an execution would have occurred but did not because of the application of Limit Up-Limit Down Price Bands or a Regulation SHO Short Sale Circuit Breaker. The Exchange believes that Users in such

[3] *See* EDGA Rule 11.8(a)(4) and EDGX Rule 11.8(a)(4).

[4] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

circumstances would prefer to have their orders posted to the BATS Book in compliance with the Limit Up-Limit Down Plan and Regulation SHO, to potentially receive a later execution. Similarly, the Exchange believes that it is reasonable and consistent with the Act to continue to re-price and display BATS market orders at their most aggressive permissible price because this functionality will be more likely to result in an execution of such order and is consistent with the overall intent of a BATS market order, which is to receive an execution not bounded by price but at the going price for the security. Specifically, the Exchange believes that its proposed handling of BATS market orders in this way is consistent with the Act because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Lastly, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users and will be applied as the default for BATS market orders. The Exchange notes that Users that do not want to have their orders posted to the BATS Book in such circumstances can elect a different time-in-force.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change raises any competitive issues, as it will simply allow certain orders that would otherwise be cancelled to post to the BATS Book. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Exchange also notes that waiver of the operative delay will allow orders that would otherwise be cancelled to post to the BATS Book for potential later execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–068 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–BATS–2014–068. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

should refer to File Number SR–BATS–2014–068, and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30119 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73874; File No. SR–BYX–2014–039]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.9(a)(2) and 11.18(e) of BATS Y-Exchange, Inc.

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2014, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange's implementation of the Limit Up-Limit Down Plan, as defined below.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(a)(2), which describes BATS market orders, and Rule 11.18(e), which describes the Exchange's implementation of the Limit Up-Limit Down Plan, as defined below. The proposed change to the operation of BATS market orders is based on existing behavior of Market Orders available on EDGA Exchange, Inc. (''EDGA'') and EDGX Exchange, Inc. (''EDGX'').[3]

Earlier this year, the Exchange and its affiliate, BATS Exchange, Inc. (''BZX''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[4] In the context of the Merger, the BGM Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the proposal set forth below is intended to add certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering for users of the BGM Affiliated Exchanges.

Currently, BATS market orders can be executed on the Exchange or routed to other destinations but cannot be posted to the BATS Book. The proposed modification to the operation of a BATS Market Order would allow such orders to post to the BATS Book under certain limited circumstances to the extent such BATS Market Order is designated with a time-in-force of Day. Specifically, as proposed, a BATS market order that is not eligible for routing (*i.e.,* BATS Only) and contains a time-in-force of Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1) unless the reason that such BATS market order cannot be executed is because it is entered into the System and the NBO (NBB) is greater (less) than the Upper (Lower) Price Band, as such term is defined in the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan''), in which case such order will be posted by the System to the BATS Book and priced at the Upper (Lower) Price Band, and re-priced as set forth in Rule 11.18(e)(5)(B), which the Exchange proposes to amend as described below. Similarly, a BATS market order to sell with a time-in-force of Day that is marked short that cannot be executed because of the existence of a Short Sale Circuit Breaker pursuant to Regulation SHO will be posted by the System to the BATS Book subject to the price sliding process as set forth in Rule 11.9(g).

The Exchange also proposes to modify Rule 11.18(e)(5)(A), which describes the handling of BATS market orders and other orders that are not currently posted to the Exchange's order book when not executable pursuant to the Limit Up-Limit Down Plan. The Exchange proposes to make clear that a BATS market order that cannot be executed within the applicable Price Bands will be cancelled if it contains a time-in-force other than Day but if it maintains a time-in-force of Day that such an order will be posted and displayed at the applicable Price Band and re-priced to remain at such Price Band. Specifically, the Exchange proposes to state that a BATS market order to buy (sell) with a time-in-force of Day that is posted to the BATS Book and displayed at the Upper (Lower) Price Band will be re-priced and displayed at the Upper (Lower) Price Band if Price Bands move such that the price of the resting market order to buy (sell) would be above (below) the Upper (Lower) Price Band or if the Price Bands move such that the order is no longer posted and displayed at the most aggressive permissible price. The Exchange further proposes that the System shall re-price such displayed interest to the most aggressive permissible price until the order is executed in its entirety or cancelled.

The Exchange proposes to post to the BATS Book all BATS market orders with a time-in-force of Day in these circumstances (*i.e.,* when an execution would otherwise occur but cannot due to the application of Price Bands pursuant to the Limit Up-Limit Down Plan or due to a Regulation SHO Short Sale Circuit Breaker), because the sender of a market order typically expects an execution when such order is sent. In these circumstances although an execution could not occur, the Exchange believes that Users would

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* EDGA Rule 11.8(a)(4) and EDGX Rule 11.8(a)(4).

[4] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

prefer to have their orders posted to the Exchange's book in compliance with the Limit Up-Limit Down Plan and Regulation SHO to potentially receive a later execution.

A BATS market order will default to a time-in-force of Day unless otherwise specified by a User, however, Users that do not want their orders posted to the BATS Book in these circumstances can choose a different time-in-force, in which case their order will be cancelled back in such circumstances. A BATS market order that is not eligible for routing with a time-in-force other than Day will be cancelled if, when reaching the Exchange, it cannot be executed on the System in accordance with Rule 11.13(a)(1). Further, the Exchange proposes to make clear that BATS market orders that are designated as BATS Post Only are rejected.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act [5] and further the objectives of section 6(b)(5) of the Act [6] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

The proposed rule change adds certain system functionality currently offered by EDGA and EDGX in order to provide a consistent technology offering across the BGM Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on BZX, EDGA and/or EDGX. The proposed rule changes would also provide Users with access to functionality that may result in the execution of such orders when they would otherwise be cancelled and will provide additional flexibility as well as increased functionality to the Exchange's System and its Users. Therefore, the Exchange believes that the proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system.

As explained elsewhere in this proposal, the proposed operation of BATS Market Orders with a time-in-force of Day is intended to allow such orders to post to the BATS Book, rather than cancel back to the User unexecuted, when an execution would have occurred but did not because of the application of Limit Up-Limit Down Price Bands or a Regulation SHO Short Sale Circuit Breaker. The Exchange believes that Users in such circumstances would prefer to have their orders posted to the BATS Book in compliance with the Limit Up-Limit Down Plan and Regulation SHO, to potentially receive a later execution. Similarly, the Exchange believes that it is reasonable and consistent with the Act to continue to re-price and display BATS market orders at their most aggressive permissible price because this functionality will be more likely to result in an execution of such order and is consistent with the overall intent of a BATS market order, which is to receive an execution not bounded by price but at the going price for the security. Specifically, the Exchange believes that its proposed handling of BATS market orders in this way is consistent with the Act because it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Lastly, the Exchange does not believe that this will permit unfair discrimination among customers, brokers, or dealers because it will be available to all Users and will be applied as the default for BATS market orders. The Exchange notes that Users that do not want to have their orders posted to the BATS Book in such circumstances can elect a different time-in-force.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change raises any competitive issues, as it will simply allow certain orders that would otherwise be cancelled to post to the BATS Book. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is one of several changes necessary to achieve a consistent technology offering by the BGM Affiliated Exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing, noting that a waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the BGM Affiliated Exchanges, with gradual roll-outs of new functionality to ensure stability of the System. The Exchange also notes that waiver of the operative delay will allow orders that would otherwise be cancelled to post to the BATS Book for potential later execution. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2014–039 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–BYX–2014–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room at 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2014–039, and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30118 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73884; File No. SR–BATS–2014–067]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, to Rule 20.6 of BATS Exchange, Inc.

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 17, 2014, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to replace current Rule 20.6 (''Current Rule''), entitled ''Obvious Error,'' with new Rule 20.6 (''Proposed Rule''), entitled ''Nullification and Adjustment of Options Transactions including Obvious Errors.'' Rule 20.6 relates to the adjustment and nullification of transactions that occur on the Exchange's equity options platform (''BATS Options'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

For several months the Exchange has been working with other options exchanges to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions. The goal of the process that the options exchanges have undertaken is to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions as well as a specific provision related to coordination in connection with large-scale events involving erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and the Exchange have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges to universally adopt: (1) Certain provisions already in place on one or more options exchanges; and (2) new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions. Thus, although the Proposed Rule is in many ways similar to and based on the Exchange's Current Rule, the Exchange is adopting various provisions to conform with existing rules of one or more options exchanges and also to adopt rules that are not currently in place on any options exchange. As noted above, in order to adopt a rule that is similar in most material respects to the rules adopted by other options exchanges, the Exchange proposes to delete the Current Rule in its entirety and to replace it with the Proposed Rule.

The Exchange notes that it has proposed additional objective standards in the Proposed Rule as compared to the Current Rule. The Exchange also notes that the Proposed Rule will ensure that the Exchange will have the same standards as all other options exchanges. However, there are still areas under the Proposed Rule where subjective determinations need to be made by Exchange personnel with respect to the calculation of Theoretical Price. The Exchange notes that the Exchange and all other options exchanges have been working to further improve the review of potentially erroneous transactions as well as their subsequent adjustment by creating an objective and universal way to determine Theoretical Price in the event a reliable NBBO is not available. For instance, the Exchange and all other options exchanges may utilize an independent third party to calculate and disseminate or make available Theoretical Price. However, this initiative requires additional exchange and industry discussion as well as additional time for development and implementation. The Exchange will continue to work with other options exchanges and the options industry towards the goal of additional objectivity and uniformity with respect to the calculation of Theoretical Price.

As additional background, the Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets. The Exchange also believes that the Proposed Rule properly balances several competing concerns based on the structure of the options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in the Proposed Rule. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in the Proposed Rule. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Definitions

The Exchange proposes to adopt various definitions that will be used in the Proposed Rule, as described below.

First, the Exchange proposes to adopt a definition of ''Customer,'' to make clear that this term would not include any broker-dealer or Professional Customer.[3] Although other portions of the Exchange's rules address the capacity of market participants, including customers, the proposed definition is consistent with such rules and the Exchange believes it is important for all options exchanges to have the same definition of Customer in the context of nullifying and adjusting trades in order to have harmonized rules. As set forth in detail below, orders on behalf of a Customer are in many cases treated differently than non-Customer orders in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

Second, the Exchange proposes to adopt definitions for both an ''erroneous sell transaction'' and an ''erroneous buy transaction.'' As proposed, an erroneous sell transaction is one in which the price received by the person selling the option is erroneously low, and an erroneous buy transaction is one in which the price paid by the person purchasing the option is erroneously high. This provision helps to reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor while knowing that the transaction will be nullified or adjusted if the market does not. For instance, when a market participant who is buying options in a particular series sees an aggressively priced sell order posted on the Exchange, and the

[3] A ''Professional'' is any person or entity that (A) is not a broker or dealer in securities; and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 16.1(a)(45).

buyer believes that the price of the options is such that it might qualify for obvious error, the option buyer can trade with the aggressively priced order, then wait to see which direction the market moves. If the market moves in their direction, the buyer keeps the trade and if it moves against them, the buyer calls the Exchange hoping to get the trade adjusted or busted.

Third, the Exchange proposes to adopt a definition of ''Official,'' which would mean an Officer of the Exchange or such other employee designee of the Exchange that is trained in the application of the Proposed Rule. The Exchange notes that this definition is consistent with the definition of Official currently contained in the Exchange's Current Rule.

Fourth, the Exchange proposes to adopt a new term, a ''Size Adjustment Modifier,'' which would apply to individual transactions and would modify the applicable adjustment for orders under certain circumstances, as discussed in further detail below. As proposed, the Size Adjustment Modifier will be applied to individual orders as follows:

Number of contracts per execution	Adjustment—TP plus/minus
1–50	N/A.
51–250	2 times adjustment amount.
251–1000	2.5 times adjustment amount.
1001 or more	3 times adjustment amount.

The Size Adjustment Modifier attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

When setting the proposed size adjustment modifier thresholds the Exchange has tried to correlate the size breakpoints with typical small and larger ''block'' execution sizes of underlying stock. For instance, SEC Rule 10b–18(a)(5)(ii) defines a ''block'' as a quantity of stock that is at least 5,000 shares and a purchase price of at least $50,000, among others.[4] Similarly, NYSE Rule 72 defines a ''block'' as an order to buy or sell ''at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less.'' Thus, executions of 51 to 100 option contracts, which are generally equivalent to executions of 5,100 and 10,000 shares of underlying stock, respectively, are proposed to be subject to the lowest size adjustment modifier. An execution of over 1,000 contracts is roughly equivalent to a block transaction of more than 100,000 shares of underlying stock, and is proposed to be subject to the highest size adjustment modifier. The Exchange has correlated the proposed size adjustment modifier thresholds to smaller and larger scale blocks because the Exchange believes that the execution cost associated with transacting in block sizes scales according to the size of the block. In other words, in the same way that executing a 100,000 share stock order will have a proportionately larger market impact and will have a higher overall execution cost than executing a 500, 1,000 or 5,000 share order in the same stock, all other market factors being equal, executing a 1,000 option contract order will have a larger market impact and higher overall execution cost than executing a 5, 10 or 50 contract option order.

Calculation of Theoretical Price

Theoretical Price in Normal Circumstances

Under both the Current Rule and the Proposed Rule, when reviewing a transaction as potentially erroneous, the Exchange needs to first determine the ''Theoretical Price'' of the option, *i.e.,* the Exchange's estimate of the correct market price for the option. Pursuant to the Proposed Rule, if the applicable option series is traded on at least one other options exchange, then the Theoretical Price of an option series is the last national best bid (''NBB'') just prior to the trade in question with respect to an erroneous sell transaction or the last national best offer (''NBO'') just prior to the trade in question with respect to an erroneous buy transaction unless one of the exceptions described below exists. Thus, the Exchange proposes that whenever the Exchange has a reliable NBB or NBO, as applicable, just prior to the transaction, then the Exchange will use this NBB or NBO as the Theoretical Price.

The Exchange also proposes to specify in the Proposed Rule that when a single order received by the Exchange is executed at multiple price levels, the Theoretical Price for the execution at the initial price level will be the last NBB and last NBO just prior to the Exchange's receipt of the order, and the Theoretical Price for all subsequent executions at other price levels will be determined by the Exchange. The Exchange believes that it is necessary to retain discretion for the handling of an order that drills-through several price levels consistent with the reasons for the wide quote provision described below, where the Exchange too has proposed to retain discretion. The Exchange believes this is important, among other reasons, to ensure that a market participant is not intentionally targeting quotations that it knows are at other price levels in order to get an adjustment to a better price. For example, if the market in an option is $1.00 x $1.05 and a member sends a large erroneously aggressively priced buy order that will execute at multiple price points while driving the price from $1.05 to $2.50, the Exchange believes that it needs discretion in order to determine whether executions that occurred as the order made it through various price levels were erroneous or if they should be upheld. If, during the handling of the order, executions took place originally at $1.05 and then at $1.06, $1.08, $1.50, $2.00 and $2.50, these price levels were the result of the handling of the order in question. The Exchange would consider the Theoretical Price of the option to be $1.05 for the initial execution and would determine Theoretical Price for executions at all other price levels. If the market participant sending the order aggressively priced the order in a way that it would drill-through all available liquidity and buy at a price up to $2.50, then the Exchange does not believe that the market participants providing liquidity in the option on the Exchange that are on the other side of such transactions should be forced to accept an adjustment to a different price level. The Exchange believes that this situation is different than, for example, an order received during a momentary gap in liquidity.

The Exchange also proposes to set forth in the Proposed Rule various provisions governing specific situations where the NBB or NBO is not available or may not be reliable. Specifically, the Exchange is proposing additional detail specifying situations in which there are no quotes or no valid quotes (as defined below), when the national best bid or offer (''NBBO'') is determined to be too wide to be reliable, and at the open of trading on each trading day.

No Valid Quotes

As is true under the Current Rule, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if there are no quotes or no valid

[4] *See* 17 CFR 240.10b–18(a)(5)(ii).

quotes for comparison purposes. As proposed, quotes that are not valid are all quotes in the applicable option series published at a time where the last NBB is higher than the last NBO in such series (a ''crossed market''), quotes published by the Exchange that were submitted by either party to the transaction in question, and quotes published by another options exchange against which the Exchange has declared self-help. Thus, in addition to scenarios where there are literally no quotes to be used as Theoretical Price, the Exchange will exclude quotes in certain circumstances if such quotes are not deemed valid. The Proposed Rule is consistent with the Exchange's application of the Current Rule but the descriptions of the various scenarios where the Exchange considers quotes to be invalid represent additional detail that is not included in the Current Rule.

The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price. Under the current Rule, Exchange personnel will generally consult and refer to data such as the prices of related series, especially the closest strikes in the option in question. Exchange personnel may also take into account the price of the underlying security and the volatility characteristics of the option as well as historical pricing of the option and/or similar options.

Wide Quotes

Similarly, pursuant to the Proposed Rule the Exchange will determine the Theoretical Price if the bid/ask differential of the NBB and NBO for the affected series just prior to the erroneous transaction was equal to or greater than the Minimum Amount set forth below and there was a bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction. If there was no bid/ask differential less than the Minimum Amount during the 10 seconds prior to the transaction then the Theoretical Price of an option series is the last NBB or NBO just prior to the transaction in question. The Exchange proposes to use the following chart to determine whether a quote is too wide to be reliable:

Bid price at time of trade	Minimum amount
Below $2.00	$0.75
$2.00 to $5.00	1.25
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.50
Above $20.00 to $50.00	3.00
Above $50.00 to $100.00	4.50
Above $100.00	6.00

The Exchange notes that the values set forth above generally represent a multiple of 3 times the bid/ask differential requirements of other options exchanges, with certain rounding applied (*e.g.,* $1.25 as proposed rather than $1.20).[5] The Exchange believes that basing the Wide Quote table on a multiple of the permissible bid/ask differential rule provides a reasonable baseline for quotations that are indeed so wide that they cannot be considered reliable for purposes of determining Theoretical Price unless they have been consistently wide. As described above, while the Exchange will determine Theoretical Price when the bid/ask differential equals or exceeds the amount set forth in the chart above and within the previous 10 seconds there was a bid/ask differential smaller than such amount, if a quote has been persistently wide for at least 10 seconds the Exchange will use such quote for purposes of Theoretical Price. The Exchange believes that there should be a greater level of protection afforded to market participants that enter the market when there are liquidity gaps and price fluctuations. The Exchange does not believe that a similar level of protection is warranted when market participants choose to enter a market that is wide and has been consistently wide for some time. The Exchange notes that it has previously determined that, given the largely electronic nature of today's markets, as little as one second (or less) is a long enough time for market participants to receive, process and account for and respond to new market information.[6] While introducing this new provision the Exchange believes it is being appropriately cautious by selecting a time frame that is an order of magnitude above and beyond what the Exchange has previously determined is sufficient for information dissemination. The table above bases the wide quote provision off of bid price in order to provide a relatively straightforward beginning point for the analysis.

As an example, assume an option is quoted $3.00 by $6.00 with 50 contracts posted on each side of the market for an extended period of time. If a market participant were to enter a market order to buy 20 contracts the Exchange believes that the buyer should have a reasonable expectation of paying $6.00 for the contracts which they are buying. This should be the case even if immediately after the purchase of those options, the market conditions change and the same option is then quoted at $3.75 by $4.25. Although the quote was wide according to the table above at the time immediately prior to and the time of the execution of the market order, it was also well established and well known. The Exchange believes that an execution at the then prevailing market price should not in and of itself constitute an erroneous trade.

Transactions at the Open

Under the Proposed Rule, for a transaction occurring as part of the Opening Process[7] the Exchange will determine the Theoretical Price where there is no NBB or NBO for the affected series just prior to the erroneous transaction or if the bid/ask differential of the NBBO just prior to the erroneous transaction is equal to or greater than the Minimum Amount set forth in the chart proposed for the wide quote provision described above. The Exchange believes that this discretion is necessary because it is consistent with other scenarios in which the Exchange will determine the Theoretical Price if there are no quotes or no valid quotes for comparison purposes, including the wide quote provision proposed by the Exchange as described above. If, however, there are valid quotes and the bid/ask differential of the NBBO is less than the Minimum Amount set forth in the chart proposed for the wide quote provision described above, then the Exchange will use the NBB or NBO just prior to the transaction as it would in any other normal review scenario.

As an example of an erroneous transaction for which the NBBO is wide at the open, assume the NBBO at the time of the opening transaction is $1.00 x $5.00 and the opening transaction takes place at $1.25. The Exchange would be responsible for determining the Theoretical Price because the NBBO was wider than the applicable minimum amount set forth in the wide quote

[5] *See, e.g.,* NYSE Arca Options Rule 6.37(b)(1).

[6] *See, e.g.,* Exchange Rule 22.12, which requires certain orders to be exposed on BATS Options for at least one second before they can be executed; *see also* Securities Exchange Act Release No. 66306 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BX–2011–084) (order granting approval of proposed rule change to reduce the duration of the PIP from one second to one hundred milliseconds).

[7] *See* Exchange Rule 21.7 for a description of the Exchange's Opening Process.

provision as described above. The Exchange believes that it is necessary to determine theoretical price at the open in the event of a wide quote at the open for the same reason that the Exchange has proposed to determine theoretical price during the remainder of the trading day pursuant to the proposed wide quote provision, namely that a wide quote cannot be reliably used to determine Theoretical Price because the Exchange does not know which of the two quotes, the NBB or the NBO, is closer to the real value of the option.

Obvious Errors

The Exchange proposes to adopt numerical thresholds that would qualify transactions as ''Obvious Errors.'' These thresholds are similar to those in place under the Current Rule. As proposed, a transaction will qualify as an Obvious Error if the Exchange receives a properly submitted filing and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.25
$2.00 to $5.00	0.40
Above $5.00 to $10.00	0.50
Above $10.00 to $20.00	0.80
Above $20.00 to $50.00	1.00
Above $50.00 to $100.00	1.50
Above $100.00	2.00

Applying the Theoretical Price, as described above, to determine the applicable threshold and comparing the Theoretical Price to the actual execution price provides the Exchange with an objective methodology to determine whether an Obvious Error occurred. The Exchange believes that the proposed amounts are reasonable as they are generally consistent with the standards of the Current Rule and reflect a significant disparity from Theoretical Price. The Exchange notes that the Minimum Amounts in the Proposed Rule and as set forth above are identical to the Current Rule except for the last two categories, for options where the Theoretical Price is above $50.00 to $100.00 and above $100.00. The Exchange believes that this additional granularity is reasonable because given the proliferation of additional strikes that have been created in the past several years there are many more high-priced options that are trading with open interest for extended periods. The Exchange believes that it is appropriate to account for these high-priced options with additional Minimum Amount levels for options with Theoretical Prices above $50.00.

Under the Proposed Rule, a party that believes that it participated in a transaction that was the result of an Obvious Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a circular distributed to Members. The Exchange currently requires electronic notification through a web-based application but believes that maintaining flexibility in the Rule is important to allow for changes to the process.

The Exchange also proposes to adopt notification timeframes that must be met in order for a transaction to qualify as an Obvious Error. Specifically, as proposed a filing must be received by the Exchange within thirty (30) minutes of the execution with respect to an execution of a Customer order and within fifteen (15) minutes of the execution for any other participant. The Exchange also proposes to provide additional time for trades that are routed through other options exchanges to the Exchange. Under the Proposed Rule, any other options exchange will have a total of forty-five (45) minutes for Customer orders and thirty (30) minutes for non-Customer orders, measured from the time of execution on the Exchange, to file with the Exchange for review of transactions routed to the Exchange from that options exchange and executed on the Exchange (''linkage trades''). This includes filings on behalf of another options exchange filed by a third-party routing broker if such third-party broker identifies the affected transactions as linkage trades. In order to facilitate timely reviews of linkage trades the Exchange will accept filings from either the other options exchange or, if applicable, the third-party routing broker that routed the applicable order(s). The additional fifteen (15) minutes provided with respect to linkage trades shall only apply to the extent the options exchange that originally received and routed the order to the Exchange itself received a timely filing from the entering participant (*i.e.,* within 30 minutes if a Customer order or 15 minutes if a non-Customer order). The Exchange believes that additional time for filings related to Customer orders is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. The Exchange believes that the additional time afforded to linkage trades is appropriate given the interconnected nature of the markets today and the practical difficulty that an end user may face in getting requests for review filed in a timely fashion when the transaction originated at a different exchange than where the error took place. Without this additional time the Exchange believes it would be common for a market participant to satisfy the filing deadline at the original exchange to which an order was routed but that requests for review of executions from orders routed to other options exchanges would not qualify for review as potential Obvious Errors by the time filings were received by such other options exchanges, in turn leading to potentially disparate results under the applicable rules of options exchanges to which the orders were routed.

Pursuant to the Proposed Rule, an Official may review a transaction believed to be erroneous on his/her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. This proposed provision is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. A transaction reviewed pursuant to the proposed provision may be nullified or adjusted only if it is determined by the Official that the transaction is erroneous in accordance with the provisions of the Proposed Rule, provided that the time deadlines for filing a request for review described above shall not apply. The Proposed Rule would require the Official to act as soon as possible after becoming aware of the transaction; action by the Official would ordinarily be expected on the same day that the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due to unusual circumstances, the Proposed Rule provides that the Official shall act no later than 8:30 a.m. Eastern Time on the next trading day following the date of the transaction in question.

The Exchange also proposes to state that a party affected by a determination to nullify or adjust a transaction after an Official's review on his or her own motion may appeal such determination in accordance with paragraph (k), which is described below. The Proposed Rule would make clear that a determination by an Official not to review a transaction or determination not to nullify or adjust a transaction for which a review was conducted on an Official's own motion is not appealable and further that if a transaction is reviewed and a determination is rendered pursuant to another provision of the Proposed Rule, no additional relief may be granted by an Official.

If it is determined that an Obvious Error has occurred based on the objective numeric criteria and time deadlines described above, the Exchange will adjust or nullify the transaction as described below and promptly notify both parties to the trade electronically or via telephone. The Exchange proposes different adjustment and nullification criteria for Customers and non-Customers.

As proposed, where neither party to the transaction is a Customer, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjust-ment—TP plus	Sell transaction adjust-ment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	0.30	0.30

The Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that an obvious error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors.

Further, as proposed any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. The Exchange believes that it is appropriate to apply the Size Adjustment Modifier to non-Customer orders because the hedging cost associated with trading larger sized options orders and the market impact of larger blocks of underlying can be significant.

As an example of the application of the Size Adjustment Modifier, assume Exchange A has a quoted bid to buy 50 contracts at $2.50, Exchange B has a quoted bid to buy 100 contracts at $2.05 and there is no other options exchange quoting a bid priced higher than $2.00. Assume that the NBBO is $2.50 by $3.00. Finally, assume that all orders quoted and submitted to Exchange B in connection with this example are non-Customer orders.

- Assume Exchange A's quoted bid at $2.50 is either executed or cancelled.
- Assume Exchange B immediately thereafter receives an incoming market order to sell 100 contracts.
- The incoming order would be executed against Exchange B's resting bid at $2.05 for 100 contracts.
- Because the 100 contract execution of the incoming sell order was priced at $2.05, which is $0.45 below the Theoretical Price of $2.50, the 100 contract execution would qualify for adjustment as an Obvious Error.
- The normal adjustment process would adjust the execution of the 100 contracts to $2.35 per contract, which is the Theoretical Price minus $0.15.
- However, because the execution would qualify for the Size Adjustment Modifier of 2 times the adjustment price, the adjusted transaction would instead be to $2.20 per contract, which is the Theoretical Price minus $0.30.

By reference to the example above, the Exchange reiterates that it believes that a Size Adjustment Modifier is appropriate, as the buyer in this example was originally willing to buy 100 contracts at $2.05 and ended up paying $2.20 per contract for such execution. Without the Size Adjustment Modifier the buyer would have paid $2.35 per contract. Such buyer may be advantaged by the trade if the Theoretical Price is indeed closer to $2.50 per contract, however the buyer may not have wanted to buy so many contracts at a higher price and does incur increasing cost and risk due to the additional size of their quote. Thus, the proposed rule is attempting to strike a balance between various competing objectives, including recognition of cost and risk incurred in quoting larger size and incentivizing market participants to maintain appropriate controls to avoid errors.

In contrast to non-Customer orders, where trades will be adjusted if they qualify as Obvious Errors, pursuant the Proposed Rule a trade that qualifies as an Obvious Error will be nullified where at least one party to the Obvious Error is a Customer. The Exchange also proposes, however, that if any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, where at least one party to the Obvious Error is a non-Customer, the Exchange will apply the non-Customer adjustment criteria described above to such transactions. The Exchange based its proposal of 200 transactions on the fact that the proposed level is reasonable as it is representative of an extremely large number of orders submitted to the Exchange that are, in turn, possibly erroneous. Similarly, the Exchange based its proposal of orders received in 2 minutes or less on the fact that this is a very short amount of time under which one Member could generate multiple erroneous transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the market participant will have far exceeded the normal behavior of customers deserving protected status.[8] While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently.

Catastrophic Errors

Consistent with the Current Rule, the Exchange proposes to adopt separate numerical thresholds for review of transactions for which the Exchange does not receive a filing requesting review within the Obvious Error timeframes set forth above. Based on this review these transactions may qualify as ''Catastrophic Errors.'' As proposed, a Catastrophic Error will be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	Minimum amount
Below $2.00	$0.50
$2.00 to $5.00	1.00

[8] The Exchange notes that in the third quarter of this year across all options exchanges the average number of valid Customer orders received and executed was less than 38 valid orders every two minutes. The number of obvious errors resulting from valid orders is, of course, a very small fraction of such orders.

Theoretical price	Minimum amount
Above $5.00 to $10.00	1.50
Above $10.00 to $20.00	2.00
Above $20.00 to $50.00	2.50
Above $50.00 to $100.00	3.00
Above $100.00	4.00

Based on industry feedback on the Catastrophic Error thresholds set forth under the Current Rule, the thresholds proposed as set forth above are more granular and lower (*i.e.,* more likely to qualify) than the thresholds under the Current Rule. As noted above, under the Proposed Rule as well as the Current Rule, parties have additional time to submit transactions for review as Catastrophic Errors. As proposed, notification requesting review must be received by the Exchange's Trade Desk by 8:30 a.m. Eastern Time on the first trading day following the execution. For transactions in an expiring options series that take place on an expiration day, a party must notify the Exchange's Trade Desk within 45 minutes after the close of trading that same day. As is true for requests for review under the Obvious Error provision of the Proposed Rule, a party requesting review of a transaction as a Catastrophic Error must notify the Exchange's Trade Desk in the manner specified from time to time by the Exchange in a circular distributed to Members. By definition, any execution that qualifies as a Catastrophic Error is also an Obvious Error. However, the Exchange believes it is appropriate to maintain these two types of errors because the Catastrophic Error provisions provide market participants with a longer notification period under which they may file a request for review with the Exchange of a potential Catastrophic Error than a potential Obvious Error. This provides an additional level of protection for transactions that are severely erroneous even in the event a participant does not submit a request for review in a timely fashion.

The Proposed Rule would specify the action to be taken by the Exchange if it is determined that a Catastrophic Error has occurred, as described below, and would require the Exchange to promptly notify both parties to the trade electronically or via telephone. In the event of a Catastrophic Error, the execution price of the transaction will be adjusted by the Official pursuant to the table below.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $2.00	$0.50	$0.50
$2.00 to $5.00	1.00	1.00
Above $5.00 to $10.00	1.50	1.50
Above $10.00 to $20.00	2.00	2.00
Above $20.00 to $50.00	2.50	2.50
Above $50.00 to $100.00	3.00	3.00
Above $100.00	4.00	4.00

Although Customer orders would be adjusted in the same manner as non-Customer orders, any Customer order that qualifies as a Catastrophic Error will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. Based on industry feedback, the levels proposed above with respect to adjustment amounts are the same levels as the thresholds at which a transaction may be deemed a Catastrophic Error pursuant to the chart set forth above.

As is true for Obvious Errors as described above, the Exchange believes that it is appropriate to adjust to prices a specified amount away from Theoretical Price rather than to adjust to Theoretical Price because even though the Exchange has determined a given trade to be erroneous in nature, the parties in question should have had some expectation of execution at the price or prices submitted. Also, it is common that by the time it is determined that a Catastrophic Error has occurred additional hedging and trading activity has already occurred based on the executions that previously happened. The Exchange is concerned that an adjustment to Theoretical Price in all cases would not appropriately incentivize market participants to maintain appropriate controls to avoid potential errors. Further, the Exchange believes it is appropriate to maintain a higher adjustment level for Catastrophic Errors than Obvious Errors given the significant additional time that can potentially pass before an adjustment is requested and applied and the amount of hedging and trading activity that can occur based on the executions at issue during such time. For the same reasons, other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat all market participants the same in the context of the Catastrophic Error provision. Specifically, the Exchange believes that treating market participants the same in this context will provide additional certainty to market participants with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted (*i.e.,* past the standard time limit for filing under the Obvious Error provision), such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional.

Significant Market Events

In order to improve consistency for market participants in the case of a widespread market event and in light of the interconnected nature of the options exchanges, the Exchange proposes to adopt a new provision that calls for coordination between the options exchanges in certain circumstances and provides limited flexibility in the application of other provisions of the Proposed Rule in order to promptly respond to a widespread market event.[9]

[9] Although the Exchange has proposed a specific provision related to coordination amongst options exchanges in the context of a widespread event, the Exchange does not believe that the Significant Market Event provision or any other provision of the proposed rule alters the Exchange's ability to coordinate with other options exchanges in the normal course of business with respect to market events or activity. The Exchange does already coordinate with other options exchanges to the

Continued

The Exchange proposes to describe such an event as a Significant Market Event, and to set forth certain objective criteria that will determine whether such an event has occurred. The Exchange developed these objective criteria in consultation with the other options exchanges by reference to historical patterns and events with a goal of setting thresholds that very rarely will be triggered so as to limit the application of the provision to truly significant market events. As proposed, a Significant Market Event will be deemed to have occurred when proposed criterion (A) below is met or the sum of all applicable event statistics, where each is expressed as a percentage of the relevant threshold in criteria (A) through (D) below, is greater than or equal to 150% and 75% or more of at least one category is reached, provided that no single category can contribute more than 100% to the sum. All criteria set forth below will be measured in aggregate across all exchanges.

The proposed criteria for determining a Significant Market Event are as follows:

(A) Transactions that are potentially erroneous would result in a total Worst-Case Adjustment Penalty greater than or equal to $30,000,000, where the Worst-Case Adjustment Penalty is computed as the sum, across all potentially erroneous trades, of: (i) $0.30 (*i.e.,* the largest Transaction Adjustment value listed in sub-paragraph (e)(3)(A) below); times; (ii) the contract multiplier for each traded contract; times (iii) the number of contracts for each trade; times (iv) the appropriate Size Adjustment Modifier for each trade, if any, as defined in sub-paragraph (e)(3)(A) below;

(B) Transactions involving over 500,000 options contracts are potentially erroneous;

(C) Transactions with a notional value (*i.e.,* number of contracts traded multiplied by the option premium multiplied by the contract multiplier) of more than $100,000,000 are potentially erroneous;

(D) Over 10,000 transactions are potentially erroneous.

As described above, the Exchange proposes to adopt a Worst Case Adjustment Penalty, proposed as criterion (A), which is the only criterion that can on its own result in an event being designated as a significant market event. The Worst Case Adjustment Penalty is intended to develop an objective criterion that can be quickly determined by the Exchange in consultation with other options exchanges that approximates the total overall exposure to market participants on the negatively impacted side of each transaction that occurs during an event. If the Worst Case Adjustment criterion exceeds $30,000,000, then an event is a Significant Market Event. As an example of the Worst Case Adjustment Penalty, assume that a single potentially erroneous transaction in an event is as follows: Sale of 100 contracts of a standard option (*i.e.,* an option with a 100 share multiplier). The highest potential adjustment penalty for this single transaction would be $6,000, which would be calculated as $0.30 times 100 (contract multiplier) times 100 (number of contracts) times 2 (applicable Size Adjustment Modifier). The Exchange would calculate the highest potential adjustment penalty for each of the potentially erroneous transactions in the event and the Worst Case Adjustment Penalty would be the sum of such penalties on the Exchange and all other options exchanges with affected transactions.

As described above, under the Proposed Rule if the Worst Case Adjustment Penalty does not exceed $30,000,000, then a Significant Market Event has occurred if the sum of all applicable event statistics (expressed as a percentage of the relevant thresholds), is greater than or equal to 150% and 75% or more of at least one category is reached. The Proposed Rule further provides that no single category can contribute more than 100% to the sum. As an example of the application of this provision, assume that in a given event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $12,000,000 (40% of $30,000,000), (B) 300,000 options contracts are potentially erroneous (60% of 500,000), (C) the notional value of potentially erroneous transactions is $30,000,000 (30% of $100,000,000), and (D) 12,000 transactions are potentially erroneous (120% of 10,000). This event would qualify as a Significant Market Event because the sum of all applicable event statistics would be 230%, far exceeding the 150% threshold. The 230% sum is reached by adding 40%, 60%, 30% and last, 100% (*i.e.,* rounded down from 120%) for the number of transactions. The Exchange notes that no single category can contribute more than 100% to the sum and any category contributing more than 100% will be rounded down to 100%.

As an alternative example, assume a large-scale event occurs involving low-priced options with a small number of contracts in each execution. Assume in this event across all options exchanges that: (A) The Worst Case Adjustment Penalty is $600,000 (2% of $30,000,000), (B) 20,000 options contracts are potentially erroneous (4% of 500,000), (C) the notional value of potentially erroneous transactions is $20,000,000 (20% of $100,000,000), and (D) 20,000 transactions are potentially erroneous (200% of 10,000, but rounded down to 100%). This event would not qualify as a Significant Market Event because the sum of all applicable event statistics would be 126%, below the 150% threshold. The Exchange reiterates that as proposed, even when a single category other than criterion (A) is fully met, that does not necessarily qualify an event as a Significant Market Event.

The Exchange believes that the breadth and scope of the obvious error rules are appropriate and sufficient for handling of typical and common obvious errors. Coordination between and among the exchanges should generally not be necessary even when a member has an error that results in executions on more than one exchange. In setting the thresholds above the Exchange believes that the requirements will be met only when truly widespread and significant errors happen and the benefits of coordination and information sharing far outweigh the costs of the logistics of additional intra-exchange coordination. The Exchange notes that in addition to its belief that the proposed thresholds are sufficiently high, the Exchange has proposed the requirement that either criterion (A) is met or the sum of applicable event statistics for proposed (A) through (D) equals or exceeds 150% in order to ensure that an event is sufficiently large but also to avoid situations where an event is extremely large but just misses potential qualifying thresholds. For instance, the proposal is designed to help avoid a situation where the Worst Case Adjustment Penalty is $15,000,000, so the event does not qualify based on criterion (A) alone, but there are transactions in 490,000 options contracts that are potentially erroneous (missing criterion (B) by 10,000 contracts), there transactions with a notional value of $99,000,000 (missing criterion (C) by $1,000,000), and there are 9,000 potentially erroneous transactions overall (missing criterion (D) by 1,000 transactions). The Exchange believes that the proposed formula, while slightly more complicated than simply requiring a certain threshold to be met in each category, may help to avoid inapplicability of the proposed

extent possible if such coordination is necessary to maintain a fair and orderly market and/or to fulfill the Exchange's duties as a self-regulatory organization.

provisions in the context of an event that would be deemed significant by most subjective measures but that barely misses each of the objective criteria proposed by the Exchange.

To ensure consistent application across options exchanges, in the event of a suspected Significant Market Event, the Exchange shall initiate a coordinated review of potentially erroneous transactions with all other affected options exchanges to determine the full scope of the event. Under the Proposed Rule, the Exchange will promptly coordinate with the other options exchanges to determine the appropriate review period as well as select one or more specific points in time prior to the transactions in question and use one or more specific points in time to determine Theoretical Price. Other than the selected points in time, if applicable, the Exchange will determine Theoretical Price as described above. For example, around the start of a SME that is triggered by a large and aggressively priced buy order, three exchanges have multiple orders on the offer side of the market: Exchange A has offers priced at $2.20, $2.25, $2.30 and several other price levels to $3.00, Exchange B has offers at $2.45, $2.30 and several other price levels to $3.00, Exchange C has offers at price levels between $2.50 and $3.00. Assume an event occurs starting at 10:05:25 a.m. ET and in this particular series the executions begin on Exchange A and subsequently begin to occur on Exchanges B and C. Without coordination and information sharing between the exchanges, Exchange B and Exchange C cannot know with certainty that whether or not the execution at Exchange A that happened at $2.20 immediately prior to their executions at $2.45 and $2.50 is part of the same erroneous event or not. With proper coordination, the exchanges can determine that in this series, the proper point in time from which the event should be analyzed is 10:05:25 a.m. ET, and thus, the NBO of $2.20 should be used as the Theoretical Price for purposes of all buy transactions in such options series that occurred during the event.

If it is determined that a Significant Market Event has occurred then, using the parameters agreed with respect to the times from which Theoretical Price will be calculated, if applicable, an Official will determine whether any or all transactions under review qualify as Obvious Errors. The Proposed Rule would require the Exchange to use the criteria in Proposed Rule 20.6(c), as described above, to determine whether an Obvious Error has occurred for each transaction that was part of the Significant Market Event. Upon taking any final action, the Exchange would be required to promptly notify both parties to the trade electronically or via telephone.

The execution price of each affected transaction will be adjusted by an Official to the price provided below, unless both parties agree to adjust the transaction to a different price or agree to bust the trade.

Theoretical price (TP)	Buy transaction adjustment—TP plus	Sell transaction adjustment—TP minus
Below $3.00	$0.15	$0.15
At or above $3.00	$0.30	$0.30

Thus, the proposed adjustment criteria for Significant Market Events are identical to the proposed adjustment levels for Obvious Errors generally. In addition, in the context of a Significant Market Event, any error exceeding 50 contracts will be subject to the Size Adjustment Modifier described above. Also, the adjustment criteria would apply equally to all market participants (*i.e.,* Customers and non-Customers) in a Significant Market Event. However, as is true for the proposal with respect to Catastrophic Errors, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price. The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that the Customer could not afford, which is less likely to be an issue for a market professional. The Exchange has otherwise proposed to treat all market participants the same in the context of a Significant Market Event to provide additional certainty to market participants with respect to their potential exposure as soon as an event has occurred.

Another significant distinction between the proposed Obvious Error provision and the proposed Significant Market Event provision is that if the Exchange, in consultation with other options exchanges, determines that timely adjustment is not feasible due to the extraordinary nature of the situation, then the Exchange will nullify some or all transactions arising out of the Significant Market Event during the review period selected by the Exchange and other options exchanges. To the extent the Exchange, in consultation with other options exchanges, determines to nullify less than all transactions arising out of the Significant Market Event, those transactions subject to nullification will be selected based upon objective criteria with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For example, assume a Significant Market Event causes 25,000 potentially erroneous transactions and impacts 51 options classes. Of the 25,000 transactions, 24,000 of them are concentrated in a single options class. The exchanges may decide the most appropriate solution because it will provide the most certainty to participants and allow for the prompt resumption of regular trading is to bust all trades in the most heavily affected class between two specific points in time, while the other 1,000 trades across the other 50 classes are reviewed and adjusted as appropriate. A similar situation might arise directionally where a Customer submits both erroneous buy and sell orders and the number of errors that happened that were erroneously low priced (*i.e.,* erroneous sell orders) were 50,000 in number but the number of errors that were erroneously high (*i.e.,* erroneous buy orders) were only 500 in number. The most effective and efficient approach that provides the most certainty to the marketplace in a reasonable amount of time while most closely following the generally prescribed obvious error rules could be to bust all of the erroneous sell transactions but to adjust the erroneous buy transactions.

With respect to rulings made pursuant to the proposed Significant Market Event provision the Exchange believes that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. Accordingly, rulings by the Exchange pursuant to the Significant Market Event provision would be non-appealable pursuant to the Proposed Rule.

Additional Provisions

Mutual Agreement

In addition to the objective criteria described above, the Proposed Rule also proposes to make clear that the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The Proposed Rule would state that a trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution.

The Exchange also proposes to explicitly state that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder. Thus, for instance, a Member is precluded from seeking to avoid applicable trade-through rules by executing a transaction and then adjusting such transaction to a price at which the Exchange would not have allowed it to execute at the time of the execution because it traded through the quotation of another options exchange. The Exchange notes that in connection with its obligations as a self-regulatory organization, the Exchange's Regulatory Department reviews adjustments to transactions to detect potential violations of Exchange rules or the Act and the rules and regulations thereunder.

Trading Halts

Exchange Rule 20.3 describes the Exchange's authority to declare trading halts in one or more options traded on the Exchange. The Exchange proposes to make clear in the Proposed Rule that it will nullify any transaction that occurs during a trading halt in the affected option on the Exchange pursuant to Rule 20.3. If any trades occur notwithstanding a trading halt then the Exchange believes it appropriate to nullify such transactions. While the Exchange may halt options trading for various reasons, such a scenario almost certainly is due to extraordinary circumstances and is potentially the result of market-wide coordination to halt options trading or trading generally. Accordingly, the Exchange does not believe it is appropriate to allow trades to stand if such trades should not have occurred in the first place.

The Exchange proposes to modify Interpretation and Policy .01 to Rule 20.3. Currently, Interpretation and Policy .01 states that the Exchange ''may'' nullify any transaction that occurs: (a) During a trading halt in the affected option on the Exchange; or (b) with respect to equity options (including options overlying ETFs), during a trading halt on the primary listing market for the underlying security. To ensure consistency with the trading halt provision of the Proposed Rule, the Exchange proposes to modify Interpretation and Policy .01 to Rule 20.3 to state that in either situation the Exchange ''shall'' nullify transactions.

Erroneous Print and Quotes in Underlying Security

Market participants on the Exchange likely base the pricing of their orders submitted to the Exchange on the price of the underlying security for the option. Thus, the Exchange believes it is appropriate to adopt provisions that allow adjustment or nullification of transactions based on erroneous prints or erroneous quotes in the underlying security.

The Exchange proposes to adopt language in the Proposed Rule stating that a trade resulting from an erroneous print(s) disseminated by the underlying market that is later nullified by that underlying market shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Trade Desk in a timely manner, as further described below. The Exchange proposes to define a trade resulting from an erroneous print(s) as any options trade executed during a period of time for which one or more executions in the underlying security are nullified and for one second thereafter. The Exchange believes that one second is an appropriate amount of time in which an options trade would be directly based on executions in the underlying equity security. The Exchange also proposes to require that if a party believes that it participated in an erroneous transaction resulting from an erroneous print(s) pursuant to the proposed erroneous print provision it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error provision described above. The Exchange has also proposed to state that the allowed notification timeframe commences at the time of notification by the underlying market(s) of nullification of transactions in the underlying security. Further, the Exchange proposes that if multiple underlying markets nullify trades in the underlying security, the allowed notification timeframe will commence at the time of the first market's notification.

As an example of a situation in which a trade results from an erroneous print disseminated by the underlying market that is later nullified by the underlying market, assume that a given underlying is trading in the $49.00–$50.00 price range then has an erroneous print at $5.00. Given that there is the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could promptly trigger based off of this new price. However, because the price that triggered them was not a valid price it would be appropriate to review said option trades when the underlying print that triggered them is removed.

The Exchange also proposes to add a provision stating that a trade resulting from an erroneous quote(s) in the underlying security shall be adjusted or busted as set forth in the Obvious Error provisions of the Proposed Rule, provided a party notifies the Exchange's Trade Desk in a timely manner, as further described below. Pursuant to the Proposed Rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the Proposed Rule, the average quote width will be determined by adding the quote widths of sample quotations at regular 15-second intervals during the four-minute time period referenced above (excluding the quote(s) in question) and dividing by the number of quotes during such time period (excluding the quote(s) in question).[10] Similar to the proposal with respect to erroneous prints described above, if a party believes that it participated in an erroneous transaction resulting from an erroneous quote(s) it must notify the Exchange's Trade Desk in accordance with the notification provisions of the Obvious Error provision described above. The Proposed Rule, therefore, puts the onus on each Member to notify the Exchange if such Member believes that a trade should be reviewed pursuant to either of the proposed provisions, as the Exchange is not in position to determine the impact of erroneous prints or quotes on individual Members. The Exchange notes that it does not believe that additional time is necessary with respect to a trade based on an erroneous quote because a Member has all information necessary to detect the error at the time of an option transaction that was triggered by an erroneous quote, which is in contrast to the proposed erroneous print provision that includes a dependency on an action

[10] The Exchange has proposed the price and time parameters for quote width and average quote width used to determine whether an erroneous quote has occurred based on established rules of options exchanges that currently apply such parameters. *See, e.g.,* CBOE Rule 6.25(a)(5); NYSE Arca Rule 6.87(a)(5). Based on discussions with these exchanges, the Exchange believes that the parameters are a reasonable approach to determine whether an erroneous quote has occurred for purposes of the proposed rule.

by the market where the underlying security traded.

As an example of a situation in which a trade results from an erroneous quote in the underlying security, assume again that a given underlying is quoting and trading in the $49.00–$50.00 price range then a liquidity gap occurs, with bidders not representing quotes in the market place and an offer quoted at $5.00. Quoting may quickly return to normal, again in the $49.00–$50.00 price range, but due to the potential perception that the underlying has gone through a dramatic price revaluation, numerous options trades could trigger based off of this new quoted price in the interim. Because the price that triggered such trades was not a valid price it would be appropriate to review said option trades.

Stop (and Stop-Limit) Order Trades Triggered by Erroneous Trades

The Exchange notes that certain market participants and their customers enter stop or stop limit orders that are triggered based on executions in the marketplace. As proposed, transactions resulting from the triggering of a stop or stop-limit order by an erroneous trade in an option contract shall be nullified by the Exchange, provided a party notifies the Exchange's Trade Desk in a timely manner as set forth below. The Exchange believes it is appropriate to nullify executions of stop or stop-limit orders that were wrongly triggered because such transactions should not have occurred. If a party believes that it participated in an erroneous transaction pursuant to the Proposed Rule it must notify the Exchange's Trade Desk within the timeframes set forth in the Obvious Error Rule above, with the allowed notification timeframe commencing at the time of notification of the nullification of transaction(s) that triggered the stop or stop-limit order.

Linkage Trades

The Exchange also proposes to adopt language that clearly provides the Exchange with authority to take necessary actions when another options exchange nullifies or adjusts a transaction pursuant to its respective rules and the transaction resulted from an order that has passed through the Exchange and been routed on to another options exchange on behalf of the Exchange. Specifically, if the Exchange routes an order pursuant to the Intermarket Option Linkage Plan [11] that results in a transaction on another options exchange (a ''Linkage Trade'') and such options exchange subsequently nullifies or adjusts the Linkage Trade pursuant to its rules, the Exchange will perform all actions necessary to complete the nullification or adjustment of the Linkage Trade. Although the Exchange is not utilizing its own authority to nullify or adjust a transaction related to an action taken on a Linkage Trade by another options exchange, the Exchange does have to assist in the processing of the adjustment or nullification of the order, such as notification to the Member and the OCC of the adjustment or nullification. Thus, the Exchange believes that the proposed provision adds additional transparency to the Proposed Rule.

Appeals

The Exchange proposes to maintain its current appeals process in connection with the Proposed Rule. Specifically, if a member of BATS Options (''Options Member'') affected by a determination made under the Proposed Rule requests within the time permitted below, the Obvious Error Panel (''Obvious Error Panel'') will review decisions made by the BATS Official, including whether an obvious error occurred and whether the correct determination was made.

In order to maintain a diverse group of participants, the Obvious Error Panel will be comprised of the Exchange's Chief Regulatory Officer (''CRO'') or a designee of the CRO, a representative of one (1) Options Member engaged in market making (any such representative, a ''MM Representative'') and representatives from two (2) Options Members satisfying one or both of the criteria set forth below (any such representative, a ''Non-MM Representative''). To qualify as a Non-MM Representative a person must: Be employed by an Options Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.

In order to further assure a diverse group of potential participants on an Obvious Error Panel, the Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. To assure fairness, in no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. Also, to the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.

Under the Proposed Rule a request for review on appeal must be made in writing via email or other electronic means specified from time to time by the Exchange in a circular distributed to Options Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Obvious Error Panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

The Obvious Error Panel may overturn or modify an action taken by the BATS Official under this Rule. All determinations by the Obvious Error Panel shall constitute final action by the Exchange on the matter at issue. The Exchange believes that this is necessary given the purpose of the appeal is finality.

In order to deter frivolous appeals, if the Obvious Error Panel votes to uphold the decision made pursuant to the Proposed Rule, the Exchange will assess a $500.00 fee against the Options Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of an Options Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Options Member.

Any determination by an Officer or by the Obvious Error Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Limit Up-Limit Down Plan

The Exchange is proposing to adopt Interpretation and Policy .01 to the Proposed Rule to provide for how the Exchange will treat Obvious and Catastrophic Errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan),[12] which is applicable to all NMS stocks, as defined in Regulation NMS Rule 600(b)(47).[13] Under the Proposed Rule, during a pilot

[11] As defined in Exchange Rule 27.1(17).

[12] Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (order approving the Plan on a pilot basis).

[13] 17 CFR 242.600(b)(47).

period to coincide with the pilot period for the Plan, including any extensions to the pilot period for the Plan, an execution will not be subject to review as an Obvious Error or Catastrophic Error pursuant to paragraph (c) or (d) of the Proposed Rule if it occurred while the underlying security was in a ''Limit State'' or ''Straddle State,'' as defined in the Plan. The Exchange, however, proposes to retain authority to review transactions on an Official's own motion pursuant to sub-paragraph (c)(3) of the Proposed Rule and to bust or adjust transactions pursuant to the proposed Significant Market Event provision, the proposed trading halts provision, the proposed provisions with respect to erroneous prints and quotes in the underlying security, or the proposed provision related to stop and stop limit orders that have been triggered by an erroneous execution. The Exchange believes that these safeguards will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they affect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security.

During a Limit or Straddle State, options prices may deviate substantially from those available immediately prior to or following such States. Thus, determining a Theoretical Price in such situations would often be very subjective, creating unnecessary uncertainty and confusion for investors. Because of this uncertainty, the Exchange is proposing to amend Rule 20.6 to provide that the Exchange will not review transactions as Obvious Errors or Catastrophic Errors when the underlying security is in a Limit or Straddle State.

The Exchange notes that there are additional protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers. First, the Exchange rejects all un-priced options orders received by the Exchange (*i.e.,* Market Orders) during a Limit or Straddle State for the underlying security. Second, SEC Rule 15c3–5 requires that, ''financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous.'' [14] Third, the Exchange has price checks applicable to limit orders that reject limit orders that are priced sufficiently far through the national best bid or national best offer (''NBBO'') that it seems likely an error occurred. The rejection of Market Orders, the requirements placed upon broker dealers to adopt controls to prevent the entry of orders that appear to be erroneous, and Exchange functionality that filters out orders that appear to be erroneous, will all serve to sharply reduce the incidence of erroneous transactions.

The Exchange represents that it will conduct its own analysis concerning the elimination of the Obvious Error and Catastrophic Error provisions during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of this proposed rule change. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from Members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the inapplicability of the Obvious Error and Catastrophic Error provisions, including data relevant to assessing the various analyses noted above.

In connection with this proposal, the Exchange will provide to the Commission and the public a dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in the month during which the proposal is approved, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle State.

In addition, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan.

No Adjustments to a Worse Price

Finally, the Exchange proposes to include Interpretation and Policy .02 to the Proposed Rule, which would make clear that to the extent the provisions of the proposed Rule would result in the Exchange applying an adjustment of an erroneous sell transaction to a price lower than the execution price or an erroneous buy transaction to a price higher than the execution price, the Exchange will not adjust or nullify the transaction, but rather, the execution price will stand.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[15] Specifically, the proposal is consistent with section 6(b)(5) of the Act [16] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The

[14] *See* Securities and Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69791 (November 15, 2010) (File No. S7–03–10).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act [17] in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Members, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications. The Exchange further discusses specific aspects of the Proposed Rule below.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. The rules of the options exchanges, including the Exchange's existing Obvious Error provision, often treat Customers differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal with respect to the allowance of mutual agreed upon adjustments or nullifications is appropriate and consistent with the Act, as such proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, allowing participants to mutually agree to correct an erroneous transactions without the Exchange mandating the outcome. The Exchange also believes that its proposal with respect to mutual adjustments is consistent with the Act because it is designed to prevent fraudulent and manipulative acts and practices by explicitly stating that it is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

The Exchange believes its proposal to provide within the Proposed Rule definitions of Customer, erroneous sell transaction and erroneous buy transaction, and Official is consistent with section 6(b)(5) of the Act because such terms will provide more certainty to market participants as to the meaning of the Proposed Rule and reduce the possibility that a party can intentionally submit an order hoping for the market to move in their favor in reliance on the Rule as a safety mechanism, thereby promoting just and fair principles of trade. Similarly, the Exchange believes that proposed Interpretation and Policy .02 is consistent with the Act as it would make clear that the Exchange will not adjust or nullify a transaction, but rather, the execution price will stand when the applicable adjustment criteria would actually adjust the price of the transaction to a worse price (*i.e.,* higher for an erroneous buy or lower for an erroneous sell order).

As set forth below, the Exchange believes it is consistent with section 6(b)(5) of the Act for the Exchange to determine Theoretical Price when the NBBO cannot reasonably be relied upon because the alternative could result in transactions that cannot be adjusted or nullified even when they are otherwise clearly at a price that is significantly away from the appropriate market for the option. Similarly, reliance on an NBBO that is not reliable could result in adjustment to prices that are still significantly away from the appropriate market for the option.

The Exchange believes that its proposal with respect to determining Theoretical Price is consistent with the Act in that it has retained the standard of the current rule, which is to rely on the NBBO to determine Theoretical Price if such NBBO can reasonably be relied upon. Because, however, there is not always an NBBO that can or should be used in order to administer the rule, the Exchange has proposed various provisions that provide the Exchange with the authority to determine a Theoretical Price. The Exchange believes that the Proposed Rule is transparent with respect to the circumstances under which the Exchange will determine Theoretical Price, and has sought to limit such circumstances as much as possible. The Exchange notes that Exchange personnel currently are required to determine Theoretical Price in certain circumstances. While the Exchange continues to pursue alternative solutions that might further enhance the objectivity and consistency of determining Theoretical Price, the Exchange believes that the discretion currently afforded to Exchange Officials is appropriate in the absence of a reliable NBBO that can be used to set the Theoretical Price.

With respect to the specific proposed provisions for determining Theoretical Price for transactions that occur as part of the Exchange's Opening Process and in situations where there is a wide quote, the Exchange believes both provisions are consistent with the Act because they provide objective criteria that will determine Theoretical Price with limited exceptions for situations where the Exchange does not believe the NBBO is a reasonable benchmark or there is no NBBO. The Exchange notes in particular with respect to the wide quote provision that the Proposed Rule will result in the Exchange determining Theoretical Price less frequently than it would pursuant to wide quote provisions that have previously been approved. The Exchange believes that it is appropriate and consistent with the Act to afford protections to market participants by not relying on the NBBO to determine Theoretical Price when the quote is extremely wide but had been, in the prior 10 seconds, at much more reasonable width. The Exchange also believes it is appropriate and consistent with the Act to use the NBBO to determine Theoretical Price when the quote has been wider than the applicable amount for more than 10 seconds, as the Exchange does not believe it is necessary to apply any other criteria in such a circumstance. The Exchange believes that market participants can easily use or adopt safeguards to prevent errors when such market conditions exist. When entering an order into a market with a

[17] 15 U.S.C. 78f(b)(5).

persistently wide quote, the Exchange does not believe that the entering party should reasonably expect anything other than the quoted price of an option.

The Exchange believes that its proposal to adopt clear but disparate standards with respect to the deadline for submitting a request for review of Customer and non-Customer transactions is consistent with the Act, particularly in that it creates a greater level of protection for Customers. As noted above, the Exchange believes that this is appropriate and not unfairly discriminatory in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets and are less likely to be watching trading activity in a particular option throughout the day. Thus, Members representing Customer orders reasonably may need additional time to submit a request for review. The Exchange also believes that its proposal to provide additional time for submission of requests for review of linkage trades is reasonable and consistent with the protection of investors and the public interest due to the time that it might take an options exchange or third-party routing broker to file a request for review with the Exchange if the initial notification of an error is received by the originating options exchange near the end of such options exchange's filing deadline. Without this additional time, there could be disparate results based purely on the existence of intermediaries and an interconnected market structure.

In relation to the aspect of the proposal giving Officials the ability to review transactions for obvious errors on their own motion, the Exchange notes that an Official can adjust or nullify a transaction under the authority granted by this provision only if the transaction meets the specific and objective criteria for an Obvious Error under the Proposed Rule. As noted above, this is designed to give an Official the ability to provide parties relief in those situations where they have failed to report an apparent error within the established notification period. However, the Exchange will only grant relief if the transaction meets the requirements for an Obvious Error as described in the Proposed Rule.

The Exchange believes that its proposal to adjust non-Customer transactions and to nullify Customer transactions that qualify as Obvious Errors is appropriate for reasons consistent with those described above. In particular, Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts.

The Exchange acknowledges that the proposal contains some uncertainty regarding whether a trade will be adjusted or nullified, depending on whether one of the parties is a Customer, because a party may not know whether the other party to a transaction was a Customer at the time of entering into the transaction. However, the Exchange believes that the proposal nevertheless promotes just and equitable principles of trade and protects investors as well as the public interest because it eliminates the possibility that a Customer's order will be adjusted to a significantly different price. As noted above, the Exchange believes it is consistent with the Act to afford Customers greater protections under the Proposed Rule than are afforded to non-Customers. Thus, the Exchange believes that its proposal is consistent with the Act in that it protects investors and the public interest by providing additional protections to those that are less informed and potentially less able to afford an adjustment of a transaction that was executed in error. Customers are also less likely to have engaged in significant hedging or other trading activity based on earlier transactions, and thus, are less in need of maintaining a position at an adjusted price than non-Customers.

If any Member submits requests to the Exchange for review of transactions pursuant to the Proposed Rule, and in aggregate that Member has 200 or more Customer transactions under review concurrently and the orders resulting in such transactions were submitted during the course of 2 minutes or less, the Exchange believes it is appropriate for the Exchange apply the non-Customer adjustment criteria described above to such transactions. The Exchange believes that the proposed aggregation is reasonable as it is representative of an extremely large number of orders submitted to the Exchange over a relatively short period of time that are, in turn, possibly erroneous (and within a time frame significantly less than an entire day), and thus is most likely to occur because of a systems issue experienced by an Options Member representing Customer orders or a systems issue coupled with the erroneous marking of orders. The Exchange does not believe it is possible at a level of 200 Customer orders over a 2 minute period that are under review at one time that multiple, separate Customers were responsible for the errors in the ordinary course of trading. In the event of a large-scale issue caused by an Options Member that has submitted orders over a 2 minute period marked as Customer that resulted in more than 200 transactions under review, the Exchange does not believe it is appropriate to nullify all such transactions because of the negative impact that nullification could have on the market participants on the contra-side of such transactions, who might have engaged in hedging and trading activity following such transactions. In order for a participant to have more than 200 transactions under review concurrently when the orders triggering such transactions were received in 2 minutes or less, the Exchange believes that a market participant will have far exceeded the normal behavior of customers deserving protected status. While the Exchange continues to believe that it is appropriate to nullify transactions in such a circumstance if both participants to a transaction are Customers, the Exchange does not believe it is appropriate to place the overall risk of a significant number of trade breaks on non-Customers that in the normal course of business may have engaged in additional hedging activity or trading activity based on such transactions. Thus, the Exchange believes it is necessary and appropriate to protect non-Customers in such a circumstance by applying the non-Customer adjustment criteria, and thus adjusting transactions as set forth above, in the event a Member has more than 200 transactions under review concurrently. In summary, due to the extreme level at which the proposal is set, the Exchange believes that the proposal is consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by encouraging market participants to retain appropriate controls over their systems to avoid submitting a large number of erroneous orders in a short period of time.

Similarly, the Exchange believes that the proposed Size Adjustment Modifier, which would increase the adjustment amount for non-Customer transactions, is appropriate because it attempts to account for the additional risk that the parties to the trade undertake for transactions that are larger in scope. The Exchange believes that the Size Adjustment Modifier creates additional incentives to prevent more impactful Obvious Errors and it lessens the impact on the contra-party to an adjusted trade. The Exchange notes that these contra-parties may have preferred to only trade the size involved in the transaction at the price at which such trade occurred, and in trading larger size has committed a greater level of capital and bears a larger hedge risk.

The Exchange similarly believes that its Proposed Rule with respect to Catastrophic Errors is consistent with the Act as it affords additional time for market participants to file for review of erroneous transactions that were further away from the Theoretical Price. At the same time, the Exchange believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for transactions that may have occurred several hours earlier and thus, which all parties to the transaction might presume are protected from further modification. Similarly, by providing larger adjustment amounts away from Theoretical Price than are set forth under the Obvious Error provision, the Catastrophic Error provision also takes into account the possibility that the party that was advantaged by the erroneous transaction has already taken actions based on the assumption that the transaction would stand. The Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price.

The Exchange believes that proposed rule change to adopt the Significant Market Event provision is consistent with section 6(b)(5) of the Act in that it will foster cooperation and coordination with persons engaged in regulating the options markets. In particular, the Exchange believes it is important for options exchanges to coordinate when there is a widespread and significant event, as commonly, multiple options exchanges are impacted in such an event. Further, while the Exchange recognizes that the Proposed Rule will not guarantee a consistent result for all market participants on every market, the Exchange does believe that it will assist in that outcome. For instance, if options exchanges are able to agree as to the time from which Theoretical Price should be determined and the period of time that should be reviewed, the likely disparity between the Theoretical Prices used by such exchanges should be very slight and, in turn, with otherwise consistent rules, the results should be similar. The Exchange also believes that the Proposed Rule is consistent with the Act in that it generally would adjust transactions, including Customer transactions, because this will protect against hedge risk, particularly for liquidity providers that might have been quoting in thousands or tens of thousands of different series and might have affected executions throughout such quoted series. The Exchange believes that when weighing the competing interests between preferring a nullification for a Customer transaction and an adjustment for a transaction of a market professional, while nullification is appropriate in a typical one-off situation that it is necessary to protect liquidity providers in a widespread market event because, presumably, they will be the most affected by such an event (in contrast to a Customer who, by virtue of their status as such, likely would not have more than a small number of affected transactions). The Exchange believes that the protection of liquidity providers by favoring adjustments in the context of Significant Market Events can also benefit Customers indirectly by better enabling liquidity providers, which provides a cumulative benefit to the market. Also, as stated above with respect to Catastrophic Errors, the Exchange believes it is reasonable to specifically protect Customers from adjustments through their limit prices for the reasons stated above, including that Customers are less likely to be watching trading throughout the day and that they may have less capital to afford an adjustment price. The Exchange believes that the proposal provides a fair process that will ensure that Customers are not forced to accept a trade that was executed in violation of their limit order price. In contrast, market professionals are more likely to have engaged in hedging or other trading activity based on earlier trading activity, and thus, are more likely to be willing to accept an adjustment rather than a nullification to preserve their positions even if such adjustment is to a price through their limit price. In addition, the Exchange believes it is important to have the ability to nullify some or all transactions arising out of a Significant Market Event in the event timely adjustment is not feasible due to the extraordinary nature of the situation. In particular, although the Exchange has worked to limit the circumstances in which it has to determine Theoretical Price, in a widespread event it is possible that hundreds if not thousands of series would require an Exchange determination of Theoretical Price. In turn, if there are hundreds or thousands of trades in such series, it may not be practicable for the Exchange to determine the adjustment levels for all non-Customer transactions in a timely fashion, and in turn, it would be in the public interest to instead more promptly deliver a simple, consistent result of nullification.

The Exchange believes that proposed rule change related to review, nullification and/or adjustment of erroneous transactions during a trading halt (including the proposed modification to Rule 20.3), an erroneous print in the underlying security, an erroneous quote in the underlying security, or an erroneous transaction in the option with respect to stop and stop limit orders is likewise consistent with section 6(b)(5) of the Act because the proposal provides for the adjustment or nullification of trades executed at erroneous prices through no fault on the part of the trading participants. Allowing for Exchange review in such situations will promote just and fair principles of trade by protecting investors from harm that is not of their own making. Specifically with respect to the proposed provisions governing erroneous prints and quotes in the underlying security, the Exchange notes that market participants on the Exchange base the value of their quotes and orders on the price of the underlying security. The provisions regarding errors in prints and quotes in the underlying security cover instances where the information market participants use to price options is erroneous through no fault of their own. In these instances, market participants have little, if any, chance of pricing options accurately. Thus, these provisions are designed to provide relief to market participants harmed by such errors in the prints or quotes of the underlying security.

The Exchange believes that the proposed provision related to Linkage Trades is consistent with the Act because it adds additional transparency to the Proposed Rule and makes clear that when a Linkage Trade is adjusted or nullified by another options exchange, the Exchange will take necessary actions to complete the nullification or adjustment of the Linkage Trade.

The Exchange believes that retaining the same appeals process as the Exchange maintains under the Current Rule is consistent with the Act because such process provides Options Members with due process in connection with decisions made by Exchange Officials under the Proposed Rule. The Exchange believes that this process provides fair representation of Options Members by ensuring diversity amongst the members of any Obvious Error Review Panel, which is consistent with sections 6(b)(3) and 6(b)(7) of the Act. The Exchange also believes that the proposed appeals process is appropriate with respect to financial penalties for appeals that result in a decision of the Exchange being upheld because it discourages frivolous appeals, thereby reducing the possibility of overusing Exchange resources that can instead be focused on other, more productive activities. The fees with respect to such financial penalties are the same as under the Current Rule, and are equitable and not unfairly discriminatory because they will be applied uniformly to all Options Members and are designed to reduce administrative burden on the Exchange as well as market participants that volunteer to participate on Obvious Error Review Panels.

With regard to the portion of the Exchange's proposal related to the applicability of the Obvious Error Rule when the underlying security is in a Limit or Straddle State, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act because it will provide certainty about how errors involving options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Further, the Exchange believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude from Rule 20.6 those transactions executed during a Limit or Straddle State.

The Exchange believes the application of the Proposed Rule without the proposed provision would be impracticable given the lack of reliable NBBO in the options market during Limit and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. The Proposed Rule change would ensure that limit orders that are filled during a Limit State or Straddle State would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system.

Moreover, given the fact that options prices during brief Limit or Straddle States may deviate substantially from those available shortly following the Limit or Straddle State, the Exchange believes giving market participants time to re-evaluate a transaction would create an unreasonable adverse selection opportunity that would discourage participants from providing liquidity during Limit or Straddle States. In this respect, the Exchange notes that only those orders with a limit price will be executed during a Limit or Straddle State. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions. Additionally, as discussed above, there are additional pre-trade protections in place outside of the Obvious and Catastrophic Error Rule that will continue to safeguard customers.

The Exchange notes that under certain limited circumstances the Proposed Rule will permit the Exchange to review transactions in options that overlay a security that is in a Limit or Straddle State. Specifically, an Official will have authority to review a transaction on his or her own motion in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will have the authority to adjust or nullify transactions in the event of a Significant Market Event, a trading halt in the affected option, an erroneous print or quote in the underlying security, or with respect to stop and stop limit orders that have been triggered based on erroneous trades. The Exchange believes that the safeguards described above will protect market participants and will provide the Exchange with the flexibility to act when necessary and appropriate to nullify or adjust a transaction, while also providing market participants with certainty that, under normal circumstances, the trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review those transactions that occur during a Limit or Straddle State would allow the Exchange to account for unforeseen circumstances that result in Obvious or Catastrophic Errors for which a nullification or adjustment may be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Similarly, the ability to nullify or adjust transactions that occur during a Significant Market Event or trading halt, erroneous print or quote in the underlying security, or erroneous trade in the option (*i.e.,* stop and stop limit orders) may also be necessary in the interest of maintaining a fair and orderly market and for the protection of investors. Furthermore, the Exchange will administer this provision in a manner that is consistent with the principles of the Act and will create and maintain records relating to the use of the authority to act on its own motion during a Limit or Straddle State or any adjustments or trade breaks based on other proposed provisions under the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

BATS believes the entire proposal is consistent with section 6(b)(8) of the Act [18] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.,* Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For

[18] 15 U.S.C. 78f(b)(8).

instance, as noted above, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days after publication (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–BATS–2014–067 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–067. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–067 and should be submitted on or before January 14, 2015.[19]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30127 Filed 12–23–14; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73883; File No. SR–NYSE–2014–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 342 To Remove the Three Years' Experience Requirement for Supervisory Personnel and To Add Supplementary Material to Rule 3110 Stating That Supervisors Must Reasonably Discharge Their Supervisory Duties and Obligations

December 18, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2014, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under Exchange Act Rule 19b–4(f)(6), which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 342 to remove the three years' experience requirement for supervisory personnel and to add supplementary material to NYSE Rule 3110 stating that supervisors must reasonably discharge their supervisory duties and obligations. 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rule 342 to remove the three years' experience requirement for supervisory personnel. The Exchange also proposes to add supplementary material to its Rule 3110 to further clarify that supervisors must reasonably discharge their supervisory duties and obligations.

NYSE Rule 342 (Compliance Supervisors)

As part of the Exchange's efforts to harmonize its rules concerning supervision with those of the Financial Industry Regulatory Authority (''FINRA''), the Exchange recently amended Rule 342 by deleting elements of the rule relating to general supervision and focusing the rule on requirements regarding qualifications and exam requirements for individuals with supervisory responsibilities.[3] As part of those amendments, the Exchange incorporated the following requirements for supervisory personnel into Rule 342(a):

- Every branch office or sales manager must have at least three years' experience as a registered representative or substantial experience in a related sales or managerial position (the new rule provided examples of roles that would qualify as a related sales or managerial position); and
- In order to qualify as a supervisory person, a principal executive should have at least three years' experience as a registered representative unless granted an exception.

The Exchange proposes to delete these requirements from Rule 342(a) as inconsistent with prior amendments to Rule 342. Specifically, effective September 12, 2008, the Exchange amended Rule 342 and its related Interpretation to eliminate the prescribed three-year record requirement for supervisory personnel and conform Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D).[4] In the Supervision Filing, the Exchange inadvertently re-introduced the standards from the formerly deleted Interpretation to Rule 342. Because the re-introduction of the three-year experience requirement for supervisory personnel was inadvertent and inconsistent with the harmonization effectuated in 2008, the Exchange proposes to delete this text from Rule 342(a).

NYSE Rule 3110 (Supervision)

In the Supervision Filing, the Exchange also adopted new Rule 3110, which is based on FINRA Rule 3110.[5] New Rule 3110(a) covers supervisory systems and requires member organizations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. Under Rule 3110, final responsibility for proper supervision rests with the member organization. While the Exchange believes that under Rule 3110 both member organizations and individual supervisors at member organizations may be liable for failing to reasonably discharge their duties and obligations with supervision and control of those employees under their supervision, for the avoidance of doubt, the Exchange proposes to add Supplementary Material .16 to Rule 3110 providing that individuals in charge of a group of employees must reasonably discharge their duties and obligations with respect to supervision and control of those employees related to the business of their employer and compliance with securities laws and regulations and Exchange rules.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, the Exchange believes that removing the three-year experience requirement for supervisors, which was previously deleted from Rule 342 and inadvertently re-introduced, would remove impediments to and perfect the mechanism of a free and open market by eliminating a regulatory disparity between the supervisory rules of the Exchange and FINRA, thereby also further harmonizing those rules. Further, the Exchange believes that adding the proposed supplementary material to Rule 3110 emphasizing that individual supervisors shall reasonably discharge their supervisory duties and obligations would remove impediments to and perfect the mechanism of a free and open market because it would reduce potential confusion and provide transparency regarding the duties and obligations of individual supervisors under the Exchange's harmonized supervision rules. The Exchange also believes that the proposed rule change would update and add specificity to the requirements governing supervision, which would promote just and equitable principles of trade and help to protect investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to achieve greater transparency and consistency between the Exchange's rules and FINRA's rules concerning supervision.

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.

[3] *See* Exchange Act Release No. 73554 (Nov. 6, 2014), 79 FR 67508 (Nov. 13, 2014) (SR–NYSE–2014–56) (''Supervision Filing'').

[4] *See* Exchange Act Release No. 58549 (Sept. 15, 2008), 73 FR 54444 (Sept. 19, 2008) (SR–NYSE–2008–80).

[5] *See* Supervision Filing, *supra,* n. 4.

[6] FINRA Rule 0140 provides that FINRA's rules apply to all members and persons associated with a member, and that persons associated with a member have the same duties and obligations as a member under FINRA's rules. Under FINRA Rule 0140, supervisors associated with a member are subject to the requirements of FINRA Rule 3110. The Exchange does not have a rule comparable to FINRA Rule 0140. The proposed amendment further clarifies that Rule 3110 applies to individual supervisors and thus promotes harmonization of the rule with Exchange rules and FINRA rules of similar purpose.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

A proposed rule change filed under Exchange Act Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.[11] The Exchange believes that the proposal qualifies for immediate effectiveness upon filing because it is a ''non-controversial'' rule change in accordance with section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] Accordingly, the Exchange has asked that the Commission waive the 30-day operative delay so that the proposal becomes operative immediately upon filing.

The Exchange believes that the proposal is non-controversial because it raises no novel issues and is consistent with rules previously approved by the Commission. The Exchange states that the purpose of the proposed rule change is to eliminate requirements in the Exchange's rules previously deleted by the Exchange and to further conform the Exchange's supervision rules to those of FINRA. The Exchange believes that updating and adding transparency to the requirements governing individual supervisors would help to protect investors and would not significantly burden competition. More specifically, the Exchange believes that: (1) Members of both FINRA and the Exchange (''Dual Members'') are already subject to the requirement that individual supervisors reasonably discharge their supervisory duties and obligations; and (2) the proposed clarification does not represent a new standard for Exchange-only members, who were subject to the same standard under former NYSE Rule 342. Accordingly, the Exchange believes that these proposed rule changes are eligible for immediately effective treatment under the Commission's current procedures for processing rule filings.[14]

The Commission believes that because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. More specifically, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because enhanced transparency to the supervision obligations of individual supervisors will help members improve compliance with applicable securities laws, including rules governing sale practices. In addition, granting the waiver would allow the Exchange to immediately eliminate requirements in the Exchange's rules that were mistakenly reinserted after being previously deleted. For these reasons, the Commission designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B) of the Act[16] to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2014–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2014–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–66 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30126 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Exchange Act Release No. 58092 (Jul. 3, 2008), 73 FR 40144 (Jul. 11, 2008) (concerning 17 CFR 200 and 241).

[15] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

In addition, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five (5) business days prior to the date of the filing of the proposed rule change, or such shorter time as designated by the Commission. *See 17 CFR 240.19b–4(f)(6)(iii).*

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73880; File No. SR–BATS–2014–071]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 17, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to make several non-substantive amendments to the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of clarifying, non-substantive changes to its fee schedule in order to convert the existing fee schedule into a chart format, including eliminating certain redundancies from and providing additional clarity to the language in the existing fee schedule. The Exchange believes that these changes will provide greater transparency to Members about how the Exchange assesses fees and calculates rebates, as well as allowing Members to more easily validate their bills on a monthly basis. The Exchange notes that none of these changes substantively amend any fee or rebate, nor do they alter the manner in which the Exchange assesses fees or calculates rebates. Specifically, the Exchange is proposing the following:

• To make clear that rebates are indicated by parentheses.

• To state the following: The rates listed in the Standard Rates table apply unless a Member's transaction is assigned a fee code other than a standard fee code. If a Member's transaction is assigned a fee code other than a standard fee code, the rates listed in the Fee Codes table will apply. Footnotes provide further explanatory text or, where annotated to fee codes, indicate variable rate changes, provided the conditions in the footnote are met. Unless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.

• To add a section and chart titled ''Standard Rates,'' which will include the standard fees and rebates for securities priced both at or above $1.00 and below $1.00 for adding liquidity, removing liquidity, and routing and removing liquidity from another venue as well as the standard fee codes associated with these rates.

• To add a section titled ''Fee Codes and Associated Fees,'' which will include the fee or rebate, the fee code, and a description for each possible execution that could occur on the Exchange or on another venue.

• To add a section titled ''Definitions,'' which will include definitions that are defined in the current fee schedule. These include the definitions listed below, which are identical to definitions contained on the Exchange's current fee schedule. All references to ''per share'' mean ''per share executed.'' ''ADAV'' means average daily added volume calculated as the number of shares added and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ''Step-Up Add TCV'' means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV. For purposes of Equities Pricing, ''Options Step-Up Add TCV'' means ADAV as a percentage of TCV in January 2014 subtracted from current ADAV as a percentage of TCV, using the definitions of ADAV and TCV as provided under Options Pricing. ADAV and ADV are calculated on a monthly basis, excluding shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours (''Exchange System Disruption''), on any day with a scheduled early market close and on the last Friday in June (the ''Russell Reconstitution Day''). Routed shares are not included in ADAV or ADV calculation. With prior notice to the Exchange, a Member may aggregate ADAV or ADV with other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member's Form BD). ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. The Exchange excludes volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

• To add a section titled ''General Notes,'' that will include the following notes: Unless otherwise indicated, rebates and charges for adding, removing or routing liquidity are listed as per share rebates and charges; the Exchange notes that to the extent a Member does not qualify for any of the tiers listed below, the rates listed in the above section titled ''Fee Codes and Associated Fees'' will apply; to the extent a Member qualifies for higher rebates and/or lower fees than those provided by a tier for which such Member qualifies, the higher rebates and/or lower fees shall apply; and variable rates provided by tiers apply only to executions in securities priced at or above $1.00.

• To add a series of footnotes describing already existing enhanced rebates including Add Volume Tiers, Step-Up Tiers, Cross-Asset Step-Up Tiers, and NBBO Setter and Joiner Tiers (which includes one non-substantive typo correction to add parentheses around the $0.0001 rebate offered for NBBO Setter Tier 1) that are not covered in the Fee Codes and Associated Fees section described above.

• To add a series of footnotes describing all fees and rebates for securities priced below $1.00 that either execute on the Exchange or another venue, to the extent applicable.

• To add new sections and charts titled ''Logical Port Fees,'' ''Market Data Fees,'' and ''Physical Connection Fees,'' which, other than being in chart form, will be identical to the current fee schedule.

• To eliminate the lead-in text that reads ''The following is the Schedule of Fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

(pursuant to Rule 15.1(a) and (c)) for BATS Exchange, Inc. (''BZX Exchange'' or ''BZX''). The Schedule of Fees is divided into Equities Pricing, Options Pricing and Physical Connection Charges.''

The Exchange notes that it is not proposing any amendments to the Options Pricing section of its fee schedule at this time.

The Exchange proposes to implement the amendments to its fee schedule effective immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with sections 6(b)(4) of the Act and 6(b)(5) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that the proposed changes are reasonable and equitable because they are non-substantive and the Exchange is not changing any fees or rebates that apply to trading activity on the Exchange or routed executions. Further, the changes are designed to make the fee schedule easier to read and for Members to validate the bills that they receive from the Exchange. The Exchange also believes that the proposal is non-discriminatory because it applies uniformly to all Members, and again, the Exchange is not making any changes to existing fees and rebates. Finally, the Exchange believes that the proposed fee schedule will be clearer and less confusing for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange believes that the changes will both make the fee schedule easier to read and simultaneously provide Members with an easier way to validate their bills on a monthly basis, both of which the Exchange believes are important components of customer service and which will allow the Exchange to better compete for order flow. The Exchange reiterates that the changes are only to the format of the fee schedule and are entirely non-substantive. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if the [sic] deem fee structures to be unreasonable or excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[8] and paragraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–071 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2014–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–071 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30123 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73877; File No. SR–ICC–2014–18]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Granting Approval of Proposed Rule Change To Revise the ICC Risk Management Framework

December 18, 2014.

I. Introduction

On October 22, 2014, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICC–2014–18 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 November 3, 2014.[3] The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description of the Proposed Rule Change

ICC is proposing to revise the ICC Risk Management Framework to incorporate certain risk model enhancements. The revisions do not require any changes to the ICC Clearing Rules.

ICC proposes revising the ICC Risk Management Framework to facilitate compliance with requirements under the European Market Infrastructure Regulations, specifically anti-procyclicality conditions described in Article 28 of the Regulatory Technical Standards.[4] Currently, according to ICC, it considers three levels of volatility in its Risk Management Framework to account for stable but prudent margin requirements. ICC proposes adding a fourth volatility scale that assigns a 25% weight to a stress period (currently the stress period is set to January 14, 2008 to December 31, 2008) and the remaining 75% to the immediate most recent 250 observations, consistent with Article 28(b) of the Regulatory Technical Standards. According to ICC, the revised initial margin requirements are expected to result in more conservative initial margin figures for some risk factors. In addition, ICC proposes introducing devolatilization enhancements to describe spread log-return time series that span market periods associated with different volatility regimes.

Additionally, ICC proposes a revised approach to computing index liquidity charges. As described by ICC, the enhancement consists of reducing the portfolio liquidity benefits across different index series. As part of its product offering, ICC clears credit default swap (''CDS'') index series. A new series of CDS indices is issued every six months, and the new series is referred to as being ''on-the-run,'' while previous series are referred to as being ''off-the-run.'' ICC states that the revised calculation establishes series-specific liquidity charges by considering the series-specific positions and establishing series-specific position directionality based on the corresponding 5-year equivalent notional amount directionality. Further, to capture the market behavior around index rolls when the bid/offer width for index-roll transactions (*i.e.,* trading the on-the-run vs. first off-the-run indices) is typically smaller than the bid/offer width of each individual leg, ICC proposes implementing time-dependent long/short liquidity charge portfolio benefits for the on-the-run and the first off-the run series. The proposed revisions to the liquidity charges are expected by ICC to result in more conservative requirements than the ones associated with the current approach.

ICC also proposes enhancements to the calculation of its concentration charges by introducing index series-specific concentration charges. According to ICC, the revised calculation establishes series-specific concentration charges for positions exceeding series-specific concentration threshold limits based on the direction of the 5-year equivalent notional amount or the net notional amount. Under the revised calculation, ICC states it will estimate series-specific concentration charge threshold limits based on the distribution of series-specific open interest information at the Clearing House. ICC believes that the estimated series-specific concentration charge threshold limits reflect the average open interest over a 5-day period. ICC expects the proposed revisions to the concentration charge will result in more conservative requirements than the ones associated with the current approach.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [5] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [6] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with section 17A of the Act [7] and the rules thereunder applicable to ICC. The proposed changes to the ICC Risk Management Framework are expected to impose more prudent initial margin requirements, meeting the requirements of Rule 17Ad–22(b)(1) and (2).[8] The proposed changes, when considered together with ICC's existing Guaranty Fund methodology, are expected to result in total financial resources maintained by ICC sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions in accordance with Rule 17Ad–22(b)(3).[9] Therefore, ICC's proposed changes are reasonably designed to meet the margin and financial resource requirements of Rule 17Ad–22(b)(1)—(3).[10] The Commission therefore believes that the changes will promote the prompt and accurate settlement of securities and derivatives transactions, consistent with the requirements of section 17A(b)(3)(F) of the Act.[11]

IV. 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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b–4.

3 Securities Exchange Act Release No. 34–73444 (Oct. 28, 2014), 79 FR 65270 (Nov. 3, 2014) (SR–ICC–2014–18).

4 Commission Delegated Regulation (EU) No. 153/2013 of 19 December 2012 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to Regulatory Technical Standards on Requirements for Central Counterparties (the ''Regulatory Technical Standards'').

5 15 U.S.C. 78s(b)(2)(C).

6 15 U.S.C. 78q–1(b)(3)(F).

7 15 U.S.C. 78q–1.

8 17 CFR 240.17Ad–22(b)(1) and (2).

9 17 CFR 240.17Ad–22(b)(3).

10 17 CFR 240.17Ad–22(b)(1)—(3).

11 15 U.S.C. 78q–1(b)(3)(F).

Act [12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ICC–2014–18) be, and hereby is, approved.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30120 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73878; File No. SR–BOX–2014–28]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Rule 7300 To Allow the Exchange To Trade Preferenced Orders

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 2014, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 7300 to allow the Exchange to trade Preferenced Orders. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new Rule 7300 (Preferenced Orders) to allow BOX Options Participants (''Participants'') to submit orders for which a Market Maker is designated to receive an allocation preference on the Exchange (''Preferenced Orders''). This proposal provides an enhanced allocation to a Preferred Market Maker when it is quoting at NBBO.

This is a competitive filing based on the rules of a number of competing options exchanges.[3] This proposal will allow the Exchange to be competitive with other options exchanges that provide similar enhanced allocation opportunities to Market Makers to reward them for attracting order flow to the Exchange.

Preferenced Orders

A Preferenced Order, as proposed, is any order submitted by a Participant to the Exchange for which a Market Maker is designated (a ''Preferred Market Maker'') to receive execution priority, with respect to a portion of the Preferenced Order, upon meeting certain qualifications described below. Preferenced Orders are submitted by a Participant by designating an order as such and identifying a Preferred Market Maker when entering the order.

Preferenced Orders may be submitted by any Participant on the Exchange. All existing order types and designations may be entered as Preferenced Orders, with the exception of Customer Cross Orders (which do not involve Market Makers) and Directed Orders (which relate to the PIP and COPIP matching algorithms). If a Market-on-Opening Order or a Complex Order is submitted as a Preferenced Order, the designation as a Preferenced Order will be disregarded and such order will be treated on the Exchange the same as if it were not a Preferenced Order. Preferenced Orders may interact with auctions and other functionality of the Exchange.

[3] *See, e.g.* Phlx Rule 1080(l), CBOE Rule 8.13, ISE Supplementary Material .03 to Rule 713, MIAX Rule 514.

Participants may designate an order as a Preferenced Order and identify the applicable Preferred Market Maker across all forms of connectivity to the Exchange. Preferenced Orders will be displayed on the Exchange's High Speed Vendor Feed (''HSVF'') the same as orders that are not designated as Preferenced Orders.

A Preferred Market Maker must maintain a continuous two-sided market, pursuant to Rule 8050(c)(1), throughout the trading day, in option classes for which it accepts Preferenced Orders, for 99% of the time the Exchange is open for trading in each such option class; provided, however, that for purposes of this requirement, a Preferred Market Maker is not required to quote in intra-day add-on series or series that have a time to expiration of nine months or more in classes for which it receives Preferenced Orders and a Market Maker may still be a Preferred Market Maker in any such series if the Market Maker otherwise complies with the Preferred Market Maker requirements. Compliance with this requirement will be determined on a monthly basis; however, determining compliance with this requirement on a monthly basis does not relieve a Preferred Market Maker from meeting this quoting requirement on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Preferred Market Maker for failing to meet this requirement each trading day. If a technical failure or limitation of a system of the Exchange prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to the Exchange, timely and accurate electronic quotes in an option class, the duration of such failure will be disregarded in determining whether the Market Maker has satisfied this requirement. The Exchange may consider other exceptions to this obligation based on a demonstrated legal or regulatory requirement or other mitigating circumstances.

Except as described below, orders submitted to the Exchange as Preferenced Orders will be treated the same as other orders submitted to the Exchange, including being executed in price/time priority according to the existing matching algorithm on the Exchange.

For each price level at which all order quantities on the BOX Book are fully executable against a Preferenced Order on a single options series, all such orders at that price will be filled and the balance of the Preferenced Order, if any, will be executed, to the extent possible, against orders at the next best price level. However, at the final price level, where the remaining quantity of the Preferenced Order is insufficient to match the total quantity of orders on the BOX Book, the allocation algorithm for orders executable against the remaining quantity of the Preferenced Order will differ from the regular price/time priority algorithm by allocating executions as described below, in the following order: (1) To Public Customers, (2) a preferred percentage to the Preferred Market Maker, (3) to all remaining quotes and orders on single option series and (4) to any Legging Order.

(Step 1) Public Customer Allocation

First, all orders for the account of Public Customers, if any, will be allocated for execution against the Preferenced Order. If multiple orders on the Exchange for the account of Public Customers are available for execution at the same price, the respective trade allocations will be by time priority. If, at the end of the Public Customer allocation, any unallocated quantity of the Preferenced Order remains, the balance of the Preferenced Order will next be allocated as described in paragraph (2) below.

(Step 2) Preferred Market Maker Allocation

After the Public Customer allocation, if (i) the price level being processed is at NBBO, (ii) the Preferred Market Maker has an existing quote on the opposite side of the Preferenced Order that is also at NBBO at the time the Preferenced Order is received and (iii) the Preferred Market Maker would not receive a greater allocation if allocated according to time priority in the next step, then a preferred trade allocation shall be provided to the Preferred Market Maker equal to forty percent (40%) of the remaining quantity of the Preferenced Order, notwithstanding any time priority of other executable orders at the same price level. However, if only one other executable, non-Public Customer order (in addition to the quote of the Preferred Market Maker) matches the Preferenced Order at the final price level, then the Preferred allocation to the Preferred Market Maker shall be equal to fifty percent (50%) of the remaining quantity of the Preferenced Order.

The quantity of the allocation to the Preferred Market Maker will be limited by the total quantity of the Preferred Market Maker quote. Executions are allocated in numbers of whole contracts and, to ensure the allocation priority afforded to Preferred Market Makers does not exceed the applicable 40% or 50% specified in proposed Rule 7300(c)(2), allocations of fractional contracts to the Preferred Market Maker in the Preferred allocation step are rounded down to the nearest whole number, which will not be less than one (1) contract. Legging Orders will not be considered when determining whether the Preferred Market Maker is allocated 40% or 50% in this step. As a result, in no case will a Preferred Market Maker receive an allocation preference (above what it would otherwise receive if executed in normal price-time priority) in excess of forty percent (40%) of the remaining quantity of the Preferenced Order after Public Customer orders are filled (or fifty percent (50%) if only one other non-Public Customer matches) at the final price level.

At the end of the Preferred allocation or if no Preferred allocation is made, the balance of the Preferenced Order will next be allocated as described in paragraph (3) below.

(Step 3) Remaining Orders Allocation

After the Preferred allocation or if no Preferred allocation is made, any remaining unallocated quantity of the Preferenced Order will be allocated to all remaining orders and quotes not receiving allocation in paragraphs (1) or (2) above, including any quote by the Preferred Market Maker if no Preferred allocation is made, but not including any Legging Order, each in order of time priority. At the end of the Remaining Orders allocation, the balance of the Preferenced Order will next be allocated as described in paragraph (4) below.

(Step 4) Legging Orders

If, after the allocation of all orders and quotes in paragraphs (1) through (3) above, there remains any unallocated quantity of the Preferenced Order, allocation of such remaining quantity of the Preferenced Order will be made to the Legging Order at the same price.

Example 1: Preferenced Order Allocation

Suppose that the BOX Book on options instrument A is as follows in order of time priority:

NBBO: Buy at 2.00/Sell at 2.03

Legging Order to buy 30 contracts at 2.00
Market Maker 1 Order to buy 8 contracts at 2.00
Preferred Market Maker 2 Quote[4] to buy 30 contracts at 2.00
Public Customer 1 Order to buy 10 contracts at 2.00
Market Maker 3 Order to buy 7 contracts at 2.00
Public Customer 2 Order to buy 5 contracts at 2.00
Total Orders to buy 90 contracts at 2.00

Example 1(a): Allocation of Non-preferenced Order

Suppose a Market Order that is not a Preferenced Order[5] to sell 50 contracts of options instrument A is submitted. The trade allocation at the best available price (at 2.00) is in time priority as follows:

Market Maker 1: 8 contracts
Market Maker 2: 30 contracts
Public Customer 1: 10 contracts
Market Maker 3: 2 contracts
Total allocation: 50 contracts

Example 1(b) Preferenced Order Allocation (40% to Preferred Market Maker)

Suppose a Preferenced Order that is a Market Order to sell 25 contracts of options instrument A is submitted. The trade allocation at the best available price (at 2.00) is as follows:

Step 1

Public Customer 1: 10 contracts
(Public Customers allocated in time priority)
Public Customer 2: 5 contracts
(Public Customers allocated in time priority)

Step 2

Preferred Market Maker 2: 4 contracts
(Preferred allocation = 40% of 10 contracts remaining = 4 contracts)

Step 3

Market Maker 1: 6 contracts
(Remaining orders allocated in time priority; Preferenced Order is filled)
Total allocation: 25 contracts

Example 1(c): Allocation of Preferenced Order to Preferred Market Maker When Time Priority Is Better Than Preferred Allocation

Suppose a Preferenced Order that is a Market Order to sell 85 contracts of options instrument A is submitted. The

[4] For purposes of Example 1(a), in which the order submitted is not a Preferenced Order, Market Maker 2 is treated as any other Market Maker and does not have any preference as a Preferred Market Maker.

[5] Example 1(a) illustrates the price/time priority matching algorithm that currently exists on the Exchange.

trade allocation at the best available price (at 2.00) is as follows:

Step 1

Public Customer 1: 10 contracts
(Public Customers allocated in time priority)
Public Customer 2: 5 contracts
(Public Customers allocated in time priority)

Step 2

Preferred Market Maker 2: 0 contracts
(Preferred allocation = 40% of 70 contracts remaining = 28 contracts to be allocated in Step 2; however, if executed in time priority with all remaining quotes/orders in Step 3, the full 30 contracts of the Preferred Market Maker's quote would be allocated at that step; accordingly, no preference is allocated in this Step 2 and the Preferred Market Maker is allocated with all other orders in time priority in Step 3)

Step 3

Market Maker 1: 8 contracts
(Remaining orders allocated in time priority)
Preferred Market Maker 2: 30 contracts
(Remaining orders allocated in time priority, which results in a greater allocation than it would have received under Step 2; accordingly, no preference is allocated in Step 2 and the Preferred Market Maker is allocated with other orders in time priority in this Step 3)
Market Maker 3: 7 contracts
(Remaining orders allocated in time priority)

Step 4

Legging Order: 25 contracts
(Legging Order allocated last; Preferenced Order is filled)
Total allocation: 85 contracts

Example 2: Preferenced Order Allocation (50% to Preferred Market Maker)

Suppose that the BOX Book on options instrument A is as follows in order of time priority:

NBBO: Buy at 2.00/Sell at 2.03

Market Maker 1 Order to buy 20 contracts at 2.00
Preferred Market Maker 2 Quote to buy 30 contracts at 2.00
Public Customer 1 Order to buy 10 contracts at 2.00
Public Customer 2 Order to buy 5 contracts at 2.00
Legging Order to buy 30 contracts at 2.00

Total Orders to buy 95 contracts at 2.00

Suppose a Preferenced Order that is a Market Order to sell 50 contracts of options instrument A is submitted. The trade allocation at the best available price (at 2.00) is as follows:

Step 1

Public Customer 1: 10 contracts
(Public Customers allocated in time priority)
Public Customer 2: 5 contracts
(Public Customers allocated in time priority)

Step 2

Preferred Market Maker 2: 17 contracts
(Preferred allocation = 50% of 35 contracts remaining = 17 contracts (rounded down))

Step 3

Market Maker 1: 18 contracts
(Remaining orders allocated in time priority; Preferenced Order is filled)
Total allocation: 50 contracts

Example 3: Multiple Price Levels

The following examples illustrate trade allocation of Preferenced Orders at multiple price levels.

Example 3(a): Exposed Order

Suppose that the BOX Book on options instrument A is as follows in order of time priority:

NBBO: Buy at 2.00/Sell at 2.10

Broker Dealer Order to sell 10 contracts at 2.10
Public Customer Order to sell 10 contracts at 2.10
Preferred Market Maker Quote to sell 10 contracts at 2.10
(No buy orders on instrument A exist on the BOX Book)

Suppose an Order to sell 10 contracts at $2.00 (within the NBBO spread) is received and exposed.

Suppose next that, while the foregoing sell Order is exposed, NBBO moves to:
Buy at 1.95/Sell at 2.10

Suppose finally that, while the foregoing sell Order is exposed, a Preferenced Order to buy 30 contracts at $2.10 is received.

The trade allocation is as follows:
First Price Level ($2.00)
Exposed Order: 10 contracts
Second Price Level ($2.10)

Step 1

Public Customer: 10 contracts

Step 2

Preferred Market Maker: 5 contracts
(Preferred allocation = 50% of 10 contracts remaining = 5 contracts)

Step 3

Broker Dealer: 5 contracts
Total allocation: 30 contracts

Example 3(b): PIP Order

Suppose that the BOX Book on options instrument A is as follows in order of time priority:

NBBO: Buy at 2.00/Sell at 2.10

Broker Dealer Order to sell 10 contracts at 2.10
Public Customer Order to sell 10 contracts at 2.10
Preferred Market Maker Quote to sell 10 contracts at 2.10
(No buy orders on instrument A exist on the BOX Book)

Suppose a PIP Order to sell 10 contracts is received with a Primary Improvement Order to buy 10 contracts at $2.00.

Suppose further that, during the PIP, a Preferenced Order to buy 30 contracts at $2.10 is received.

The trade allocation is as follows:
First Price Level ($2.09)
PIP Order: 10 contracts [6]
Second Price Level ($2.10)

Step 1

Public Customer: 10 contracts

Step 2

Preferred Market Maker: 5 contracts
(Preferred allocation = 50% of 10 contracts remaining = 5 contracts)

Step 3

Broker Dealer: 5 contracts
Total allocation: 30 contracts

As described above, only orders on single option series designated as Preferenced Orders will be treated differently from orders entered on the Exchange that are not Preferenced Orders. Complex Orders may also be submitted as Preferenced Orders. However, any Preferenced Order designation will be disregarded for Complex Orders for purposes of dissemination, matching and execution and Complex Orders submitted as Preferenced Orders will be treated the same as Complex Orders submitted without such designation. As a result, no special allocation will be made to any Preferred Market Maker, and no alternate allocation algorithm will be applied, when executing a Complex Order designated as a Preferenced Order.

It will be a violation of proposed Rule 7300 for a Market Maker to be informed of a pending Preferenced Order, with

[6] As provided in the Exchange's Rule 7150(a)(1), the Preferenced Order is an Unrelated Order to the PIP and, pursuant to Rule 7150(j), executes at a penny better than NBBO because the best BOX price on the opposite side of the market from the Preferenced Order is at NBBO ($2.10).

respect to which such Market Maker is designated as the Preferred Market Maker, prior to its entry on the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

In particular, the Exchange believes this proposed rule change is a reasonable modification designed to provide incentives and enhanced allocation to a Preferred Market Maker when it is quoting at NBBO. The Exchange also believes that the proposed rule change will increase the number of transactions on the Exchange by attracting additional order flow to the Exchange, which will ultimately enhance competition and provide customers with additional opportunities for execution. The Exchange believes these changes are consistent with the goals to remove impediments to and to perfect the mechanism for a free and open market and a national market system.

Specifically, the Exchange believes that the proposal will result in increased liquidity available at improved prices, with more competitive pricing outside the control of any single Participant. The proposed rule change should promote and foster competition.

Preferenced Order Allocation

The Exchange believes the proposed changes to the Preferenced Order allocations are an improvement over the current allocation algorithm, and will benefit all market participants submitting Preferenced Orders on the Exchange. As a result of the proposed changes, the Exchange believes that existing and additional Participants will use Preferenced Orders to increase the number of orders that are submitted to the Exchange. Additionally, the Exchange believes that the proposed Preferenced Order allocation algorithm will encourage greater participation by Market Makers to provide quotes on the Exchange as Preferred Market Makers. These additional responses should encourage greater competition on the Exchange, which should, in turn, benefit and protect investors and the public interest through the potential for greater volume of orders and executions.

The proposed rule changes provide priority of Public Customer orders over Preferred Market Makers at the same price. The Exchange believes this priority is consistent with the purposes of the Act. The Exchange believes the Preferenced Order allocation proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it recognizes the unique status of Public Customers in the marketplace by ensuring Public Customers maintain priority before any allocations afforded to Preferred Market Makers.

The Exchange believes that the proposed Preferenced Order allocation is reasonable, equitable and not unfairly discriminatory to both customers and Participants. Giving Preferred Market Makers allocation priority for 40% or 50% of the remaining quantity of the Preferenced Order will provide important incentives for Preferred Market Makers to provide liquidity on BOX, which provides greater opportunity for executions, tighter spreads and better pricing for all Participants. While the Commission has, in the past, been concerned about locking up large portions of order flow from intra-market price competition, the Exchange believes that the proposed preferred allocation percentage adequately balances the aim of rewarding the Preferred Market Maker with the aim of leaving a sizeable enough portion of the incoming Preferenced Order for the other Market Makers quoting at the same price. The Commission has previously taken the position that a preference of 40% is not clearly inconsistent with the Act and standards of competition and free and open markets.[9]

The Exchange believes that disregarding Legging Orders when determining whether the Preferred Market Maker retains 40% or 50% under proposed Rule 7300(c)(2) is reasonable, equitable and not unfairly discriminatory to customers and Participants because Legging Order allocation will not be affected by the Preferred Market Maker retaining the difference between 40% or 50% as discussed above.

The Exchange believes that the Preferred Market Maker allocation is designed to promote just and equitable principles of trade and to protect investors and the public interest, because it strikes a reasonable balance between encouraging vigorous price competition and rewarding Market Makers for their unique duties. In order to receive an allocation preference, Preferred Market Makers must meet heightened quoting requirements as Market Makers, and also be quoting at the NBBO at the time the Preferenced Order is received. Heightened quoting requirements mean that Preferred Market Makers must maintain a continuous two-sided market throughout the trading day, in option classes for which it accepts Preferenced Orders, for 99% of the time the Exchange is open for trading in each such option class; provided that it is not required to so quote in intra-day add-on series or series that have a time to expiration of nine months or more. Overall, the proposed Preferred Market Maker allocations represent a careful balancing by the Exchange of the rewards and obligations of various types of market participants. The Exchange believes these requirements of Preferred Market Makers will provide an incentive for Market Makers to assume these additional responsibilities beyond those already required, which will facilitate improved trading opportunities on BOX for all Participants.

The Exchange believes that the proposal to give Legging Orders last priority is reasonable, equitable and not unfairly discriminatory to customers and Participants. Giving Legging Orders last priority preserves the established priority of Legging Orders since they currently have last priority under the existing allocation algorithm. The Exchange believes that providing priority for single option orders over Legging Orders in the proposed Preferenced Order allocation algorithm is reasonable as it preserves the established priority of single option orders when executing with Complex Orders. Therefore the Exchange believes this aspect of the proposal will avoid investor confusion when executing orders on the Exchange.

In addition, it is consistent with just and equitable principles of trade and protects investors and the public interest that each Preferred Market Maker be prohibited from being informed of a pending Preferenced Order prior to its entry on the Exchange,

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See, e.g.,* Securities Exchange Act Release No. 45936 (May 15, 2002), 67 FR 36279, 26280 (May 23, 2002); Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683, 35685–66 (June 5, 2000); Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11398 (March 2, 2000); Phlx 80/20 Proposal, 67 FR at 48787–88.

if such Market Maker is designated as the Preferred Market Maker.

The Exchange notes that this proposal is similar to the rules of other exchanges.[10]

For the foregoing reasons, the Exchange believes this proposal is a reasonable modification to its rules, designed to facilitate increased interaction of orders on the Exchange, and to do so in a manner that ensures a dynamic, real-time trading mechanism that maximizes opportunities for trade executions of orders. The Exchange believes it is appropriate and consistent with the Act to adopt the proposed rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change represents any undue burden on competition or will impose any burden on competition among exchanges in the listed options marketplace not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is pro-competitive because it will enable the Exchange to better compete with other options exchanges that provide similar allocation preferences and algorithms.[11]

With respect to intra-market competition, Preferenced Orders will be available to all Participants. The Exchange believes that the proposal should encourage Market Makers that desire to qualify as Preferred Market Makers to regularly maintain quotes at competitive price levels in order to obtain execution percentages on Preferenced Orders. As noted above, the proposed preferred allocation percentage for Preferred Market Makers leaves a sizeable enough portion of the incoming Preferenced Order for the other Market Makers quoting at the same price to encourage intra-market price competition. Submitting a Preferenced Order to the Exchange is entirely voluntary and Participants will determine whether they wish to submit these orders to the Exchange. The Exchange operates in a highly competitive marketplace with other competing exchanges and market participants can readily direct their order flow to other exchanges if they so choose.

[10] *See supra,* note 3.

[11] *See supra,* note 3.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2014–28 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–BOX–2014–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2014–28, and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30121 Filed 12–23–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73866; File No. SR–NYSEArca–2014–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To List and Trade Shares of the Sit Rising Rate Fund Under NYSE Arca Equities Rule 8.200

December 17, 2014.

I. Introduction

On October 16, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Sit Rising Rate Fund (''Fund''), pursuant to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on November 4, 2014.[3] On November 6, 2014, the Exchange filed Amendment No. 2 to the proposed rule change, which superseded and replaced the proposed

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 73464 (Oct. 29, 2014), 79 FR 65437.

rule change as originally filed.[4] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on November 20, 2014.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.200, Commentary .02, which permits the listing of Trust Issued Receipts (''TIRs''). The Exchange has represented that the Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.[6] 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.[7]

The Fund is a series of the ETF Managers Group Commodity Trust I (''Trust''), a Delaware statutory trust.[8] The Fund's sponsor and investment manager is ETF Managers Capital LLC (''Sponsor''), a limited liability company that is a commodity pool operator that is registered with the Commodity Futures Trading Commission [9] and is a member of the National Futures Association. U.S. Bancorp Fund Services will be the transfer agent, custodian, and administrator for the Fund. Esposito Securities LLC will provide statutory and wholesaling distribution services.

The Fund's investment objective will be to profit from rising interest rates by tracking the performance of a portfolio (''Benchmark Portfolio'') that consists of exchange traded futures contracts and options on futures on 2, 5 and 10-year U.S. Treasury securities (''Treasury Instruments'') and that is weighted to achieve a targeted negative 10-year average effective portfolio duration (''Benchmark Component Instruments''). The Fund will seek to achieve its investment objective by investing in the Benchmark Component Instruments currently constituting the Benchmark Portfolio. The Fund will invest in the Treasury Instruments in the same weighting as the Benchmark Portfolio.

The Benchmark Portfolio will be maintained by Sit Fixed Income Advisors II, LLC (''Sit'') [10] and will be rebalanced, reconstituted, or both, monthly, typically on the 15th of each month and on the next business day if the 15th is a holiday, weekend, or other day on which the national exchanges are closed, to maintain a negative 10-year average effective duration. The Benchmark Portfolio and the Fund will each maintain a short position in Treasury Instruments. The Fund will not use futures contracts or options to obtain leveraged investment results.

The Sponsor anticipates that approximately 5% to 15% of the Fund's assets will be used as payment for or collateral for Treasury Instruments. In order to collateralize its Treasury Instrument positions the Fund will hold such assets, from which it will post margin to its futures commission merchant (''FCM''), in an amount equal to the margin required by the relevant exchange, and transfer to its FCM any additional amounts that may be separately required by the FCM.[11] Any assets not required to be posted as margin with the FCM will be held at the Fund's administrator in cash or cash equivalents.

The Fund will incur certain expenses in connection with its operations. The Fund will hold cash or cash equivalents such as U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds) for direct investment or as collateral for the Treasury Instruments and for other liquidity purposes and to meet redemptions that may be necessary on an ongoing basis. These expenses and income from the cash and cash equivalent holdings may cause imperfect correlation between changes in the Fund's net asset value (''NAV'') and changes in the Benchmark Portfolio, because the Benchmark Portfolio does not reflect expenses or income.

Additional information regarding the Fund, including the NAV calculation, operation of the Fund, the Benchmark Portfolio, restrictions, risks, fees, expenses, and Share creations and redemption can be found in the Notice and the Registration Statement, as applicable.[12]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade Shares of the Fund is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[14] 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 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 finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[15] 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 regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').[16] The Exchange will make available on its Web site daily trading volume of the Shares and the closing prices of the Shares.[17] 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.[18] Information regarding the previous day's closing price and trading volume

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[4] Amendment No. 2 replaced SR–NYSEArca–2014–120 and superseded such filing in its entirety. Amendment No. 1 was filed on November 3, 2014, and withdrawn on November 6, 2014.

[5] *See* Securities Exchange Act Release No. 73602 (Nov. 14, 2014), 79 FR 69173 (''Notice'').

[6] *See id.* at 69173.

[7] *See id.* at 69177.

[8] The Trust submitted a registration statement with respect to the Fund on Form S–1 under the Securities Act of 1933 on October 7, 2014 (File No. 333–199190) (''Registration Statement'').

[9] The Sponsor is not a broker-dealer or affiliated with a broker-dealer. *See* Notice, *supra* note 5, 79 FR at 69178.

[10] Sit is not affiliated with the Sponsor. Sit is not a broker-dealer or affiliated with a broker-dealer. *See id.* at 69174 n. 14.

[11] When establishing positions in Treasury Instruments, the Fund will be required to deposit initial margin with a value of approximately 3% to 10% of the value of each Treasury Instrument position at the time it is established. These margin requirements are subject to change from time to time by the exchange or the FCM. On a daily basis, the Fund will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its Treasury Instruments positions. *See id.* at 69174 n. 17.

[12] *See supra* notes 5 and 8, respectively.

[13] 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).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] *See* Notice, *supra* note 5, 79 FR at 69177.

[17] *See id.*

[18] *See id.* at 69176.

information for the Shares will be published daily in the financial section of newspapers.[19]

The Intraday Indicative Value (''IIV'') [20] per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange (9:30 a.m., Eastern Time, to 4:00 p.m., Eastern Time).[21] The Exchange disseminates the IIV through the facilities of CTA/CQ High Speed Lines.[22] In addition, the IIV is published on the NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.[23]

The NAV of the Fund will be calculated daily and will be released after 4:00 p.m. Eastern Time, the end of the Core Trading Session on the Exchange.[24] The NAV for the Shares will be disseminated to all market participants at the same time.[25] The Fund's Web site will display the applicable end of day closing NAV and will include additional quantitative information updated on a daily basis, including (a) the current NAV per Share daily and the prior Business Day's NAV and the reported closing price; (b) the mid-point of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) the Bid-Ask Price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information.[26]

The Fund will provide Web site disclosure of its portfolio holdings daily, which will include the names, quantity, price, and market value of the Treasury Instruments held by the Fund and other financial instruments such as Treasury Bills, if any; the characteristics of such instruments and cash equivalents; and the amount of cash held in the portfolio of the Fund.[27] This Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time.[28] In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation.[29]

The daily closing Benchmark Portfolio level and the percentage change in the daily closing level for the Benchmark Portfolio will be publicly available from one or more major market data vendors.[30] The intraday value of the Benchmark Portfolio, updated every 15 seconds, will also be available through major market data vendors.[31] The Benchmark Component Instruments constituting the Benchmark Portfolio and anticipated rebalancing dates, information relating to the weighting of Treasury Instruments in the Benchmark Portfolio, and the Benchmark Portfolio methodology will be available on the Web site for Fund.[32]

The Exchange represents that quotation and last sale information for the Treasury Instruments will be widely disseminated through a variety of major market data vendors worldwide, such as Bloomberg and Reuters.[33] In addition, the Exchange further represents that complete real-time price (and volume) data for such contracts is available by subscription from Reuters and Bloomberg.[34] The intra-day closing prices and settlement prices of the Treasury Instruments are or will be readily available from the Web sites of the futures exchanges on which the Treasury Instruments are traded.[35] The relevant futures exchanges trading Treasury Instruments also provide delayed futures price (and volume) information on current and past trading sessions and market news free-of-charge on their Web sites.[36] The specific contract specifications for such contracts are available at the futures exchanges Web sites, as well as other financial informational sources.[37] The price of Treasury Instruments also is available on a 24-hour basis from major market data vendors.[38] Similar information regarding the Treasury securities underlying the Treasury Instruments will be publicly available from various financial information service providers.[39] Quotation information from brokers and dealers or major market data vendors will be available for U.S. Treasuries or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds).[40]

The Commission believes that the proposal to list and trade Shares is reasonably designed to promote fair disclosure of information that may be necessary to price Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, the Benchmark Portfolio, or the value of the underlying Treasury Instruments occurs.[41] If an interruption to the dissemination of the IIV, the Benchmark Portfolio, or the value of the underlying Treasury Instruments persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[42] In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as

[19] *See id.*

[20] The Exchange represents that the IIV will be calculated by using the Fund's prior day's closing NAV per share as a base and updating that value throughout the trading day to reflect changes in the most recently reported trade price for the Treasury Instruments. The net asset value of the Fund's cash and cash equivalent holdings will not be updated throughout the day. *See id.* at 69175. The Exchange states that there is a gap in time at the beginning and the end of each day during which the Fund's Shares are traded on the Exchange but real-time trading prices for contracts traded on the futures exchanges are unavailable and that, during such gaps in time, the IIV will be calculated based on the end of day price of such contracts from the futures exchanges' immediately preceding trading session. *See id.*

[21] *See id.* at 69175.

[22] *See id.*

[23] *See id.*

[24] *See id.* The Fund's NAV will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the total number of outstanding Shares. For purposes of calculating NAV, the administrator will use the closing price of the Treasury Instruments on the U.S. exchanges on which the Treasury Instruments are traded (primarily on the exchanges within the Chicago Mercantile Exchange Group of exchanges and other national exchanges. The Administrator will value all other holdings of the Fund at (1) current market value, if quotations for such property are readily available, or (2) fair value, as reasonably determined by the Administrator, if the current market value cannot be determined. *See id.*

[25] *See id.* at 69177.

[26] *See id.* at 69176 and 69177.

[27] *See id.* at 69176.

[28] *See id.*

[29] *See id.*

[30] *See id.* at 69177.

[31] *See id.*

[32] *See id.* at 69174 and 69177.

[33] *See id.* at 69176.

[34] *See id.*

[35] *See id.* at 69177.

[36] *See id.*

[37] *See id.* at 69176.

[38] *See id.*

[39] *See id.* at 69177.

[40] *See id.*

[41] *See id.*

[42] *See id.*

the NAV is available to all market participants.[43]

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.[44] Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the underlying Treasury Instruments, (2) if the creation or redemption of Shares is suspended for a period that, in the judgment of the Exchange, may detrimentally impact Exchange trading of the Shares, or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [45] or by the halt or suspension of trading of the underlying Treasury Instruments.[46]

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[47] Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered market makers in TIRs to facilitate surveillance.[48] The Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying Treasury Instruments with other markets and 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 and underlying Treasury Instruments from such markets and other entities.[49] In addition, the Exchange may obtain information regarding trading in the Shares and underlying Treasury Instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[50] 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.[51] Furthermore, the Sponsor is not a broker-dealer or affiliated with a broker-dealer and the Sponsor represents that it will implement and maintain procedures designed to prevent the use and dissemination of material non-public information.[52] Sit, which maintains the Benchmark Portfolio, is not affiliated with the Sponsor and is not a broker-dealer or affiliated with a broker-dealer.[53]

In support of this proposal, the Exchange has made the following representations:

(1) The Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.[54]

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[55]

(3) Trading in the Shares will be subject to the existing trading surveillances, administered by the FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and 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.[56]

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Basket aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.[57]

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[58] as provided by NYSE Arca Equities Rule 5.3.[59]

(6) For components traded on exchanges, not more than 10% of such components shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.[60]

(7) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, the Fund's investments will not be used to seek performance that is a multiple (*e.g.,* 2X or 3X) or inverse multiple of the Fund's Benchmark Portfolio.[61]

(8) A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.[62]

This order is based on the Exchange's representations above, as well as those in the Notice.[63]

For the forgoing reasons, the Commission believes the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[64] that the proposed rule change (SR–NYSEArca–2014–120), as modified by Amendment No. 2 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[65]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30105 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

[43] *See id.*

[44] *See id.*

[45] *See* NYSE Arca Equities Rule 7.12.

[46] *See* Notice, *supra* note 5, 79 FR at 69177.

[47] *See id.* at 69178.

[48] *See id.* at 69177.

[49] *See id.*

[50] *See id.* at 69177–78.

[51] *See id.* at 69178.

[52] *See id.*

[53] *See id.*

[54] *See id.* at 69176.

[55] *See id.* at 69177.

[56] *See id.*

[57] *See id.* at 69178.

[58] 17 CFR 240.10A–3.

[59] *See* Notice, *supra* note 5, 79 FR at 69177.

[60] *See id.* at 69178.

[61] *See id.* at 69176.

[62] *See id.* at 69177.

[63] *See supra* note 5.

[64] 15 U.S.C. 78s(b)(2).

[65] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73879; File No. SR–NASDAQ–2014–122]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Port Fees

December 18, 2014.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend the manner in which the Exchange assesses Port Fees which are located in chapter XV, entitled ''Options Pricing,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on January 2, 2015.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase Port Fees for the following ports from $550.00 to $600.00 per port, per month, per mnemonic: Order Entry Ports,[3] CTI Ports,[4] OTTO Ports,[5] ITTO Ports,[6] BONO Ports,[7] Order Entry DROP Ports,[8] OTTO Drop Ports[9] and SQF Ports[10] (collectively ''NOM Ports''). ITTO and BONO Port fees will continue to be assessed to non-NOM Participants and NOM Participants.

Each NOM Participant is assigned a Market Participant Identifier or ''mnemonic''[11] and in some cases, certain NOM Participants request multiple mnemonics for purposes of accounting for trading activity. These mnemonics identify users at a particular NOM Participant. The Exchange bills its port fees based on the number of mnemonics configured for each port. By way of example, if a NOM Participant, ABC, requested 2 ports from the Exchange and further requested that each port be configured to be accessed by 4 mnemonics or in some cases account numbers,[12] the NOM Participant would be billed for 8 ports at the rate of $550 per port for that month. All billing is captured at the Participant level. NOM Participants may choose to have multiple mnemonics or in some case multiple account numbers for the convenience of conducting their business, however only one mnemonic and one account number is required to conduct business on NOM.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[13] in general, and with section 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that increasing the fees for the NOM Ports from $550 to $600 per port, per month, per

[3] The Order Entry Port Fee is a connectivity fee in connection with routing orders to the Exchange via an external order entry port. NOM Participants access the Exchange's network through order entry ports. A NOM Participant may have more than one order entry port.

[4] CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation. The trade messages are routed to a member's connection containing certain information. The administrative and market event messages include, but are not limited to: System event messages to communicate operational-related events; options directory messages to relay basic option symbol and contract information for options traded on the Exchange; complex strategy messages to relay information for those strategies traded on the Exchange; trading action messages to inform market participants when a specific option or strategy is halted or released for trading on the Exchange; and an indicator which distinguishes electronic and non-electronically delivered orders.

[5] OTTO provides a method for subscribers to send orders and receive status updates on those orders. OTTO accepts limit orders from system subscribers, and if there is a matching order, the orders will execute. Non-matching orders are added to the limit order book, a database of available limit orders, where they are matched in price-time priority.

[6] ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules chapter VI, section 8. ITTO is the options equivalent of the NASDAQ TotalView/ITCH data feed that NASDAQ offers under NASDAQ Rule 7023 with respect to equities traded on NASDAQ. As with TotalView, members use ITTO to ''build'' their view of the NOM book by adding individual orders that appear on the feed, and subtracting individual orders that are executed. *See* chapter VI, section 1 at subsection (a)(3)(A).

[7] BONO℠ is a data feed that provides the NOM Best Bid and Offer (''NOM NBBO'') and last sale information for trades executed on NOM. The NOM NBBO and last sale information are identical to the information that NOM sends to the Options Price Regulatory Authority (''OPRA'') and which OPRA disseminates via the consolidated data feed for options. BONO is the options equivalent of the NASDAQ Basic data feed offered for equities under NASDAQ Rule 7047. *See* Chapter VI, Section 1 at subsection (a)(3)(B).

[8] The DROP interface provides real time information regarding orders sent to NOM and executions that occurred on NOM. The DROP interface is not a trading interface and does not accept order messages.

[9] The OTTO DROP data feed provides real-time information regarding orders entered through OTTO and the execution of those orders. The OTTO DROP data feed is not a trading interface and does not accept order messages.

[10] SQF ports are ports that receive inbound quotes at any time within that month. The SQF Port allows a NOM Participant to access information such as execution reports and other relevant data through a single feed. For example, this data would show which symbols are trading on NOM and the current state of an options symbol (*i.e.,* open for trading, trading, halted or closed). Auction notifications and execution reports are also available. NOM Market Makers rely on data available through the SQF Port to provide them the necessary information to perform market making activities.

[11] A mnemonic is a unique identifier consisting of a four character alpha code.

[12] Account numbers are assigned by the Exchange and associated with particular NOM Participants.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4) and (5).

mnemonic is reasonable because it would allow the Exchange to keep pace with increasing technology costs. The increased Port Fees reflect the increased costs that the Exchange bears with respect to maintaining ports. The Port Fees are reasonable because they enable the Exchange to offset, in part, its connectivity costs associated with making such ports available, including costs based on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and support. The Exchange's Port Fees are in line with costs for ports at other options exchanges.[15]

The Exchange believes that increasing the fees for the NOM Port Fees from $550 to $600 per port, per month, per mnemonic is equitable and not unfairly discriminatory because the Exchange assesses the same fees for all ports to all NOM participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change is reasonably designed to be fair and equitable, and therefore, will not unduly burden any particular group of market participants trading on the Exchange. The Exchange's proposal increases fees for all ports for all NOM Participants. The proposed fees are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to NOM Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–122 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2014–122 and should be submitted on or before January 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–30122 Filed 12–23–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Treaty Energy Corporation; Order of Suspension of Trading

December 22, 2014.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Treaty Energy Corporation (''Treaty Energy'') because it has not filed a periodic report since its Form 10–Q for the period ending September 30, 2013. Treaty Energy is a Nevada corporation based in New Orleans, Louisiana, and its common stock is quoted on the OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc. under the ticker symbol TECO.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Treaty Energy Corporation is suspended for the period from 9:30 a.m. EST on December 22, 2014, through 11:59 p.m. EST on January 6, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2014–30296 Filed 12–22–14; 11:15 am]

BILLING CODE 8011–01–P

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[15] Miami International Securities Exchange LLC (''MIAX'') assesses ports fees that range from $1,000 to $5,000 depending on connectivity levels. *See* MIAX's Fee Schedule. ISE Gemini, LLC (''ISE Gemini'') assesses port fees that range from $750–$12,500 depending on connectivity levels. *See* ISE Gemini's Fee Schedule. Finally, C2 Options Exchange, Incorporated (''C2'') assesses port fees that range from $500—$1,000 depending on connectivity levels. *See* C2's Fee Schedule.

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Escalate Capital Partners SBIC I, L.P.; License No. 06/06–0335; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Escalate Capital Partners SBIC I, L.P., 300 W. 6th Street, Suite 2250, Austin, TX 78701, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Escalate Capital Partners SBIC I, L.P. seeks to provide debt financing to Donuts, Inc., 10500 NE 8th Street, Suite 350, Bellevue, WA 98004. The proceeds will be used to refinance existing debt, buy top level domain names, and for general corporate purposes, including new hiring.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Austin Ventures, an Associate of Escalate Capital Partners SBIC I, L.P., owns more than ten percent of Donuts, Inc.; therefore this transaction is considered financing an Associate requiring SBA prior written exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: December 17, 2014.

Javier E. Saade,

Associate Administrator for Office of Investment and Innovation.

[FR Doc. 2014–30148 Filed 12–23–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8982]

30-Day Notice of Proposed Information Collection: Training/Internship Placement Plan

AGENCY: Department of State.

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to January 23, 2015.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, ECA/EC, SA–5, Floor 5, Department of State, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on 202–632–3206 or at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Training/Internship Placement Plan.
- *OMB Control Number:* 1405–0170.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, ECA/EC.
- *Form Number:* Form DS–7002.
- *Respondents:* Entities designated by the Department of State as sponsors of exchange visitor programs in the trainee or intern categories and U.S. businesses that provide the training or internship opportunity.
- *Estimated Number of Respondents:* 120.
- *Estimated Number of Responses:* 30,000.
- *Average Hours per Response:* 1.5 hours.
- *Total Estimated Burden:* 45,000 hours.
- *Frequency:* On occasion depending on the number of exchange participants annually.
- *Obligation to Respond:* Required to Obtain or Retain Benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Please note that the comments submitted in response to the Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J-Nonimmigrant) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended. Trainee/Internship Placement Plans are to be completed by designated program sponsors. A Training/Internship Placement Plan (T/IPP) is required for each trainee or intern participant. It will set forth the training or internship program to be followed, methods of supervision, the skills the trainee or intern will obtain, and trainee or intern remuneration. The plan must be signed by the trainee or intern, sponsor, and the third party placement organization, if a third party organization is used in the conduct of the training or internship. Upon request, trainees or interns must present a fully executed Trainee/Internship Placement Plan on Form DS–7002 to any Consular Official interviewing them in connection with the issuance of J–1 visas.

Dated: December 18, 2014.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2014–30238 Filed 12–23–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8983]

Culturally Significant Objects Imported for Exhibition Determinations: ''Latin America in Construction: Architecture 1955–1980''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Latin America in Construction: Architecture 1955–1980,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about March 29, 2015, until on or about July 19, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 18, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–30235 Filed 12–23–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8981]

In the Matter of the Designation of Ajnad Misr, Also Known as Egypt's Soldiers, Also Known as Soldiers of Egypt, Also Known as Ajnad Masr, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Ajnad Misr, also known as Egypt's Soldiers, also known as Soldiers of Egypt, also known as Ajnad Masr, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 11, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–30215 Filed 12–23–14; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 8980]

In the Matter of the Designation of Ibrahim al-Rubaysh, Also Known as Ibrahimj Sulayman Muhammad Arbaysh, Also Known as Ibrahim Salman Mohammed Al Rubeish, Also Known as Sheikh Ibrahim Bin Sulayman Al Rubaysh, Also Known as Ibrahim Bin Sulayman Al Rubaysh, Also Known as Ibrahim al-Rubaish, Also Known as Abu Muhammad, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ibrahim al-Rubaysh, also known as Ibrahimj Sulayman Muhammad Arbaysh, also known as Ibrahim Salman Mohammed Al Rubeish, also known as Sheikh Ibrahim Bin Sulayman Al Rubaysh, also known as Ibrahim Bin Sulayman Al Rubaysh, also known as Ibrahim al-Rubaish, also known as Abu Muhammad, poses a significant risk of committing acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: December 11, 2014.

John F. Kerry,

Secretary of State.

[FR Doc. 2014–30217 Filed 12–23–14; 8:45 am]

BILLING CODE 4710–AD–P

DEPARTMENT OF STATE

[Public Notice 8984]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, January 14, 2015 in the Oklahoma Room of the U.S. Department of Transportation Headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590. The primary purpose of the meeting is to prepare for the second Session of the International Maritime Organization's (IMO) Sub-Committee on Pollution Prevention and Response (PPR 2) to be held at the IMO Headquarters, United Kingdom, February 19–23, 2015.

The agenda items to be considered include:

—Decisions of other IMO bodies
—Safety and pollution hazards of chemicals and preparation of consequential amendments to the IBC Code, taking into account recommendations of GESAMP–EHS
—Code for the transport and handling of limited amounts of hazardous and noxious liquid substances in bulk on offshore support vessels
—Guidelines for port State control under the 2004 BWM Convention, including guidance on ballast water sampling and analysis
—Production of a manual entitled ''Ballast Water Management—How to do it''
—Improved and new technologies approved for ballast water management systems and reduction of atmospheric pollution
—Consideration of the impact on the Arctic of emissions of Black Carbon from international shipping
—Revised guidelines for the Inventory of Hazardous Materials
—Guidance for international offers of assistance in response to a marine oil pollution incident
—Revised section II of the Manual on oil pollution contingency planning
—Guide on oil spill response in ice and snow conditions
—Updated IMO Dispersant Guidelines
—Updated OPRC Model training courses
—Unified interpretation to provisions of IMO environment-related Conventions
—Guidelines pertaining to equivalent methods set forth in regulation 4 of MARPOL Annex VI and not covered by other guidelines
—Guidelines as called for under paragraph 2.2.5.6 of the revised NO_X Technical Code 2008 (NO_X-reducing devices)
—Biennial agenda and provisional agenda for PPR 3
—Election of Chairman and Vice-Chairman for 2016
—Any other business
—Report to the Marine Environment Protection Committee

Members of the public may attend this meeting up to the seating capacity of the room. They may also contact the meeting coordinator to request a call-in number, in order to ensure adequate teleconference capacity, or to submit written comments and related material ahead of time. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, Ms. Regina Bergner, by email at *regina.r.bergner@uscg.mil,* by phone at 202–372–1431, or by fax at (202) 372–8383, not later than January 5, 2015, or 9 days prior to the meeting. Requests made after January 5, 2015 might not be able to be accommodated.

Please note that due to security considerations, two valid, government-issued photo identifications must be presented to gain entrance to the building. Directions to DOT Headquarters may be found at: *http://www.dot.gov/directions.* Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

Dated: December 18, 2014.

Marc Zlomek,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2014–30236 Filed 12–23–14; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 5, 2014, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 5, 2014, in Annapolis, Maryland, the Commission took the following actions: (1) Approved or tabled the applications of certain water resources projects; (2) accepted settlements in lieu of penalty from Lion Brewery, Inc.; LHP Management, LLC; and Southwestern Energy Production Company; and (3) took additional actions, as set forth in the Supplementary Information below.

DATES: December 5, 2014.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Regulatory Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Adoption of a resolution honoring retiring staff member Richard A. Cairo, General Counsel; (2) an informational presentation from SRBC staff member Aaron Henning on recent water quality and biological characterizations SRBC has undertaken for the reservoirs on the lower Susquehanna River; (3) adoption of a resolution urging the President and Congress to provide full funding for the National Streamflow Information Program, thereby supporting the Susquehanna Flood Forecast & Warning System; (4) approval of a rulemaking action pertaining to clarification of the water uses involved in hydrocarbon development that are subject to SRBC's consumptive use regulations, as implemented by the Approval by Rule program; (5) delegation of authority to the Executive Director to enter into certain settlement agreements; (6) approval/ratification of two grants, one grant amendment, and one contract; (7) approval of a request from Sunbury Generation LP for a transfer of approval to Hummel Station LLC; and (8) denial of a request from Future Power PA, LLC for a waiver of 18 CFR 806.3 and 806.4.

Compliance Matters

The Commission approved settlements in lieu of civil penalty for the following projects:

1. Lion Brewery, Inc., City of Wilkes-Barre, Luzerne County, Pa.—$50,000.
2. LHP Management, LLC (Muncy Creek), Muncy Creek Township, Lycoming County, Pa.—$3,000.
3. Southwestern Energy Production Company (Borough of Bellefonte's Wastewater Treatment Plant), Borough of Bellefonte, Centre County, Pa.—$4,500.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Anadarko E&P Onshore LLC (Pine Creek), Watson Township,

Lycoming County, Pa. Renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20101201).

2. Project Sponsor and Facility: Geary Enterprises (Buttermilk Creek), Falls Township, Wyoming County, Pa. Renewal of surface water withdrawal of up to 0.099 mgd (peak day) (Docket No. 20100907).
3. Project Sponsor and Facility: Heidelberg Township Municipal Authority, Heidelberg Township, Lebanon County, Pa. Renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from existing public water supply Well 5 (Docket No. 19820602).
4. Project Sponsor and Facility: IBM Corporation, Village of Owego, Tioga County, N.Y. Groundwater withdrawal of up to 0.800 mgd (30-day average) from Well 415.
5. Project Sponsor and Facility: Jay Township Water Authority, Jay Township, Elk County, Pa. Groundwater withdrawal of up to 0.265 mgd (30-day average) from Byrnedale Well #1.
6. Project Sponsor and Facility: LHP Management, LLC (Muncy Creek), Muncy Creek Township, Lycoming County, Pa. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20120607).
7. Project Sponsor and Facility: New Morgan Borough Utilities Authority, New Morgan Borough, Berks County, Pa. Groundwater withdrawal of up to 0.275 mgd (30-day average) from Well PW–1.
8. Project Sponsor and Facility: New Morgan Borough Utilities Authority, New Morgan Borough, Berks County, Pa. Groundwater withdrawal of up to 0.108 mgd (30-day average) from Well PW–3.
9. Project Sponsor and Facility: New Oxford Municipal Authority, Oxford Township, Adams County, Pa. Groundwater withdrawal of up to 0.144 mgd (30-day average) from Oxen Country Meadows Well 1.
10. Project Sponsor and Facility: Somerset Regional Water Resources, LLC (Salt Lick Creek), New Milford Township, Susquehanna County, Pa. Renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20100905).
11. Project Sponsor and Facility: Southwestern Energy Production Company (Susquehanna River), Eaton Township, Wyoming County, Pa. Surface water withdrawal of up to 2.000 mgd (peak day).
12. Project Sponsor and Facility: SWEPI LP (Cowanesque River), Nelson Township, Tioga County, Pa. Renewal of surface water withdrawal of up to 0.533 mgd (peak day) (Docket No. 20100604).
13. Project Sponsor and Facility: Talisman Energy USA Inc. (Seeley Creek), Wells Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20100914).
14. Project Sponsor and Facility: Talisman Energy USA Inc. (Wyalusing Creek), Stevens Township, Bradford County, Pa. Renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20100915).
15. Project Sponsor and Facility: Tenaska Resources, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Renewal of surface water withdrawal of up to 0.400 mgd (peak day) (Docket No. 20100910).
16. Project Sponsor and Facility: Upper Halfmoon Water Company, Halfmoon Township, Centre County, Pa. Groundwater withdrawal of up to 0.206 mgd (30-day average) from Well 6.

Project Application Approved Involving a Diversion

The Commission approved the following project application involving a diversion:

1. Project Sponsor: Seneca Resources Corporation. Project Facility: Impoundment 1, receiving groundwater from Seneca Resources Corporation Wells 5H and 6H and Clermont Wells 1, 3, and 4, Norwich Township, McKean County, Pa. Into-basin diversion from the Ohio River Basin of up to 1.473 mgd (peak day).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor and Facility: EQT Production Company (West Branch Susquehanna River), Greenwood Township, Clearfield County, Pa. Application for surface water withdrawal of up to 0.900 mgd (peak day).
2. Project Sponsor and Facility: Keister Miller Investments, LLC (West Branch Susquehanna River), Mahaffey Borough, Clearfield County, Pa. Application for surface water withdrawal of up to 2.000 mgd (peak day).
3. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.590 mgd (30-day average) from Stoltzfus Well.
4. Project Sponsor: Pennsylvania Department of Environmental Protection—South-central Regional Office, City of Harrisburg, Dauphin County, Pa. Facility Location: Leacock Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.432 mgd (30-day average) from Township Well.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 17, 2014.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2014–30197 Filed 12–23–14; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2014–0102]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden.

DATES: Comments must be received on or before January 23, 2015.

ADDRESSES: Send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–505, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Toth's telephone number is (202) 366–5378 and his email address is *gary.toth@dot.gov*.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with these requirements, this notice announces that the following information collection request has been forwarded to OMB. A Federal Register Notice with a 60-day comment period was published on Monday, September 29, 2014 (Volume 79, Number 188, pages 58402 and 58403). NHTSA did not receive any comments.

Title: Crash Report Sampling System (CRSS).

Type of Request: New information collection.

OMB Control Number: None.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect crash data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and the property damage associated with motor vehicle crashes. In the late 1970s, NHTSA's National Center for Statistics and Analysis (NCSA) devised a multidisciplinary approach to meet the data needs of our end users that utilizes an efficient combination of census, sample-based, and existing State files to provide nationally representative traffic crash data on a timely basis. NCSA operates data programs consisting of records-based systems that include the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System General Estimates System (NASS–GES); and detailed crash investigation-based systems which include the National Automotive Sampling System Crashworthiness Data System (NASS–CDS) and the Special Crash Investigations (SCI) program. NASS–CDS focused on the crashworthiness of passenger cars, light trucks, and vans involved in crashes and damaged enough to be towed. NASS–GES, on the other hand, collected limited data on other highway crashes in order to produce general estimates.

Recognizing the importance as well as the limitations of the current National Automotive Sampling Systems, NHTSA is undertaking a modernization effort to upgrade our data systems by improving the information technology infrastructure, updating the data we collect and reexamining the sample sites. The goal of this overall modernization effort is to develop a new crash data system that meets current and future data needs. This new system will be designed to collect record-based information and investigation-based information. The redesigned records-based acquisition process will identify highway safety problem areas and provide general data trends and be referred to as the Crash Report Sampling System (CRSS).

CRSS will obtain data from a nationally representative probability sample selected from police-reported motor vehicle traffic crashes. Specifically, crashes involving at least one motor vehicle in transport on a trafficway that result in property damage, injury or a fatality will be included in the CRSS sample. The crash reports sampled will be chosen from selected areas that reflect the geography, population, miles driven, and the number of crashes in the United States. No additional data beyond the selected crash reports will be collected. Once the crash reports are received they will be coded and the data will be entered into the CRSS database.

CRSS will acquire national information on fatalities, injuries and property damage only directly from existing State police crash reports. CRSS data quality reviews will be conducted to determine whether the data acquired are responsive to the total user population needs. The user population includes Federal and State agencies, automobile manufacturers, insurance companies, and the private sector. Annual changes in the sample parameters are minor in terms of operation and method of data collection, and do not affect the reporting burden of the respondent (CRSS data coders will utilize existing State crash files).

Affected Public: Federal and State agencies and the private sector.

Estimated Annual Burden: 34,944 hours.

Requested Expiration Date of Approval: Three (3) years from the approval date. Please note that this period was incorrectly stated as five (5) years in the 60 day notice.

Estimated Number of Respondents: 630.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chap. 35; 49 U.S.C. 30181–83.

Terry T. Shelton,

Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2014–30100 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventeenth Meeting: RTCA Special Committee 222, AMS(R)S

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

ACTION: Meeting Notice of RTCA Special Committee 222, AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of the seventeenth meeting of the RTCA Special Committee 222, Inmarsat AMS(R)S. The purpose of this meeting is threefold. First, we will consider the draft Change 4 to DO–210D. The draft will be submitted to the workspace no later than close of business Eastern time on January 12. Second, we will consider a work plan to progress development of Iridium NEXT material for DO–343, as approved by the PMC on December 16, 2014. Third, we will consider a work plan to progress cooperation with Eurocae WG–82, as approved by the PMC on December 16, 2014.

DATES: The meeting will be held January 22, 2015 from 9:00 a.m.–4:00 p.m.

ADDRESSES: RTCA Headquarters, 1150 18th St. NW., Suite 910, Washington, DC 20036. This meeting is expected to be largely virtual, conducted over Webex with a telephone bridge. Dr. LaBerge and Mr. Robinson will be present at RTCA. Those who plan to attend in person at the RTCA offices should notify Jennifer Iversen by January 18, 2015 to assure that appropriate space is reserved. Please contact Jennifer Iversen (*jiversen@rtca.org*) if you intent to attend in person or remotely.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen may be contacted directly at email: *jiversen@rtca.org* or by The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662/(202)

833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 222. The agenda will include the following:

January 22

- Greetings & Attendance.
- Review summary of April meeting (16th Plenary).
- Review draft Change 4 to DO–210D with the intent of approving it for the RTCA FRAC process.
- Develop work plan for preparation of Iridium NEXT material for DO–343.
- Develop work plan for cooperation with Eurocae WG–82.
- Other items as appropriate and time permitting. Please submit other items to Chuck LaBerge (*laberge.engineering@gmail.com*) by January 18.
- Schedule for 18th Plenary. The 18th Plenary session will be for the purpose of resolving any comments received during the FRAC process for Change 4 to DO–210D. By RTCA policy, this meeting must be in Washington, DC.
- Adjourn
- Remote instructions:
- *https://rtca.webex.com/rtca/j.php?MTID=m8dc9a3b46efb799dc8125393a1fd8f04*
- Meeting number: 685 974 934
- Meeting password: January22
- Audio connection:
- Dial: 1–888–481–3032
- International: 617–801–9600
- Participant Passcode: 22276542

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2014–30260 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty Seventh Meeting: RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS)

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

ACTION: Meeting Notice of RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

SUMMARY: The FAA is issuing this notice to advise the public of the twenty seventh meeting of the RTCA Special Committee 213, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

DATES: The meeting will be held January 27–29 2015 from 8:30 a.m.–5:00 p.m. on January 27–28 and 8:30 a.m.–4:00 p.m. on January 29.

ADDRESSES: FAA Long Beach Aircraft Evaluation Group 3960 Paramount Blvd. Lakewood, California 90712 1st Floor Conference Rooms A, B, & C.

FOR FURTHER INFORMATION CONTACT: Tim Etherington, *tjetheri@rockwellcollins.com,* (319) 295–5233 or mobile at (319) 431–7154, Patrick Krohn, *pkrohn@uasc.com,* telephone (425) 602–1375 or mobile at (425) 829–1996 and The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.* Additional contact information: RTCA contact is Jennifer Iverson, *jiverson@rtca.org,* (202) 330–0662.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 213. The agenda will include the following:

Tuesday, January 27

Plenary discussion (sign-in at 08:00 a.m.)
- Introductions and administrative items
- Review and approve minutes from last full plenary meeting
- Review of terms of reference (if needed)
- Status of DO–341A
- DO–3XX FRAC Comment Review and Disposition

Wednesday, January 28

Plenary discussion
- DO–3XX FRAC Comment Review and Disposition
- WG2 Draft Document

Thursday, January 29

Plenary discussion
- WG2 Draft Document
- Administrative items (new meeting location/dates, action items etc.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 18, 2014.

Mohannad Dawoud,

Management Analyst, NextGen, Program Oversight and Administration, Federal Aviation Administration.

[FR Doc. 2014–30262 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) and the National Park Service (NPS) are inviting interested persons to apply to fill two existing openings and one upcoming opening on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). The two existing openings represent environmental concerns and the upcoming opening represents Native American interests. Selected members will each serve 3-year terms.

DATES: Persons interested in applying for the NPOAG openings representing environmental concerns or Native American interests need to apply by January 30, 2015.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3808, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director-

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

The current NPOAG consists of Heidi Williams representing general aviation; Alan Stephen, Mark Francis, and Matthew Zuccaro representing commercial air tour operators; Michael Sutton and Dick Hingson representing environmental interests with two open seats; and Rory Majenty and Martin Begaye representing Native American interests. Mr. Majenty's 3-year membership expires on April 2, 2015.

Selection

In order to retain balance within the NPOAG ARC, the FAA and NPS are seeking candidates interested in filling the two current open seats and Mr. Majenty's soon to be expiring seat. The two open seats to be filled will represent environmental concerns and the one upcoming opening will represent Native American interests. The FAA and NPS invite persons interested in representing environmental concerns or Native American interests on the ARC to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the ARC must be made to Mr. Lusk in writing and postmarked or emailed on or before January 30, 2015. The request should indicate whether or not you are a member of an association or group related to environmental issues or a Native American tribe or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to these issues and concerns. The term of service for NPOAG ARC members is 3 years. Current members may re-apply for another term.

On June 18, 2010, President Obama signed a Presidential Memorandum directing agencies in the Executive Branch not to appoint or re-appoint federally registered lobbyists to advisory committees and other boards and commissions. Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in Hawthorne, CA on December 16, 2014.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2014–30263 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2014–0039]

ET-Plus Guardrail End Terminal

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; Request for Information.

SUMMARY: The purpose of this notice is to request data and information regarding the ET-Plus guardrail end terminal (ET-Plus) manufactured by Trinity Industries, Inc. (Trinity). In 2005, the FHWA determined that ET-Plus guardrail end terminal met the relevant crash test criteria and therefore was eligible for Federal-aid highway funding. This fall, a jury issued a verdict that Trinity made a false or fraudulent claim to FHWA when it sought the eligibility determination for the ET-Plus. Additionally, a number of parties have raised concerns about the in-service performance of the ET-Plus and the potential variability in the dimensions of installed units of the ET-Plus. As a result, FHWA is undertaking a number of efforts to assess these issues. The FHWA is seeking technical information and data to assist in this work.

DATES: Data and information must be submitted to FHWA on or before February 9, 2015.

ADDRESSES: Mail or hand deliver data and information to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, data or information may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* Please note that the Federal eRulemaking portal is unable to receive videos or any document larger than 10MB. If you would like to submit a video or a document that is 10MB or larger, please directly contact one of the individuals identified in this notice. All data and information must include the docket number that appears in the heading of this document. All data and information received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of data and information must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all information in any one of our dockets by the name of the individual submitting the information (or signing the information, if submitted on behalf of an association, business, or labor union). The DOT solicits comments from the public to better inform its activities. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mike Griffith, Office of Safety, 202–366–9469, *mike.griffith@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. For legal questions, please contact Jennifer Mayo, Assistant Chief Counsel, FHWA Office of the Chief Counsel, (202) 366–1523, or via email at *jennifer.mayo@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve information online through the Federal eRulemaking portal at: *www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's Web site at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web site at: *http://www.gpoaccess.gov.*

Background

As a national leader in highway safety, FHWA is responsible for ensuring that America's roads continue to remain among the safest in the world. This commitment to safety is the principle that guides all our efforts, and FHWA is acting on multiple fronts to ensure the safety of roadside safety hardware and, specifically, the ET-Plus guardrail end terminal.

The FHWA's strategy includes a data-driven determination regarding the performance of the ET-Plus and reviewing our existing processes for assessing the safety of roadside safety hardware to determine whether we need to change them.

Most immediately, we need to reach a conclusion about the performance of the ET-Plus based on the data we are collecting and reviewing. Our first step is to review all previous crash tests of the device and to obtain new testing to ensure that the ET-Plus meets the National Cooperative Highway Research Program test criteria (NCHRP 350) test criteria applicable to this device. These tests, along with field measurements of installed devices, will help confirm that the at least 200,000 ET-Plus devices on the system met the same criteria as all other guardrail end treatments. We expect to receive, review, and make the crash test results public in early 2015, after the completion of the testing and our review of the data. If the ET-Plus end terminal fails the crash tests or FHWA otherwise determines that the ET-Plus poses safety concerns to the traveling public, FHWA will revoke the eligibility letter for the device.

More broadly, FHWA is reviewing multiple sources of information we have collected to assess whether the ET-Plus has vulnerabilities outside of the NCHRP 350 testing now being conducted. The review of this information will help FHWA determine whether to require additional testing of the ET-Plus or other devices in the same class.

Another key component of FHWA's ongoing efforts is to evaluate the in-service performance of the ET-Plus. We are collecting a broad array of data to support this assessment. The FHWA asked all State DOTs to send us information regarding the performance of the ET-Plus on their roadways. Additionally, we have obtained information about the ET-Plus that was presented in the recent trial in Texas, as well as data received from parties involved in the trial. We have analyzed our own safety data and data from our Federal safety partners, including the Motor Vehicle Crash Causation Study, the Highway Safety Information System, and the Fatality Analysis Reporting System. We will objectively and thoroughly assess all of this information to reach a data-driven conclusion about the real-world performance of the ET-Plus.

Purpose of This Notice

As part of our information gathering about crashes involving the ET-Plus guardrail end terminal, FHWA is seeking data and information regarding the in-service performance of the ET-Plus. In particular, we are seeking two sets of data and information. First, we are asking for any data and information concerning vehicle crashes involving the ET-Plus. Second, we are asking for any data and information about the dimensions of the ET-Plus as installed along roadways.

1. ET-Plus Crash Data and Information. The FHWA is seeking data and information concerning vehicle crashes involving the ET-Plus. We are seeking crash reports, photographs of damaged ET-Plus devices at crash scenes, photographs of vehicles at crash scenes that impacted ET-Plus devices, and crash reconstruction reports with corresponding data. The type of data and information we are requesting includes, but is not limited to the following:

- Crash narratives;
- Crash diagrams;
- Severity of the crash as noted in the crash report (Killed, A injury, B injury, etc.);
- The approximate mass, speed, and angle of impact of the vehicle;
- The orientation of the vehicle as it impacted the terminal (head-on, side-impact, front corner, etc.);
- The location of the crash (State, route, county, mile marker);
- The type of road on which the crash occurred;
- The weather at the time of the crash;
- The condition of the shoulder and/or roadside at the time of the crash;
- The installation and maintenance history of the terminal; and
- The condition of the terminal prior to the impact.

2. ET-Plus Dimensions as Installed. The FHWA is seeking data concerning the dimensions of the ET-Plus devices installed on highways. In particular, we are interested in a few key dimensions: Channel width, exit gap, guide chute exit height, and outside guide channel length. We also are interested in any other dimensions that could be useful in determining the in-service performance of the ET-Plus. We are asking for existing data and information that the public may have and are not asking the public to undertake any activities that may risk the safety of themselves or others.

The FHWA plans to objectively and thoroughly assess all data and information provide to us. We ask that any data or information be provided on or before February 9, 2015.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This action contains a collection of information requirement under the PRA. This information collection requirement has been previously submitted to OMB for approval, pursuant to the provisions of the PRA. The requirement has been approved through May 31, 2017; OMB Control No. 2125–0025.

Authority: 23 U.S.C. 148 and 315.

Issued on: December 18, 2014.

Gregory G. Nadeau,

Acting Administrator, Federal Highway Administration.

[FR Doc. 2014–30081 Filed 12–23–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35885]

Peru Land Acquisition 2, LLC—Acquisition Exemption—Rail Line of The City of Peru, Ill.

Peru Land Acquisition 2, LLC (PLA2), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the City of Peru, Ill. (Peru) ownership of approximately 3.5 miles of rail line (the Peru City Track), in Bureau and LaSalle Counties, Ill.

According to PLA2, there are no mileposts associated with the line. The line was formerly owned by LaSalle & Bureau County Railroad Company and was subsequently sold to Peru. The trackage extends from a point of connection with Illinois Railway, LLC (IR), a Class III rail carrier, on its western end, to the end of the line west of Illinois Route 251.

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35886, *Illinois Railway, LLC—Lease and Operation Exemption—Rail Line of Peru Land Acquisition 2, LLC,* wherein IR seeks Board approval to lease and operate the Peru City Track, upon PLA2's becoming a Class III rail carrier.

The transaction may be consummated on or after January 10, 2015 (30 days after the notice of exemption was filed).

PLA2 certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier and will not exceed $5 million.

PLA2 states that the acquisition agreement does not include any provision limiting PLA2's future interchange of traffic on the line with a third-party connecting carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 2, 2015 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35885, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 19, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–30201 Filed 12–23–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35887]

Pioneer Railcorp, Pioneer Railroad Services, Inc., and Decatur Junction Railway Co.—Exemption for Transaction Within a Corporate Family

Pioneer Railcorp (PIONEER), Pioneer Railroad Services, Inc. (PRS), and Decatur Junction Railway Co. (DJR) (collectively, the Applicants) have filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction in which: (1) PRS will acquire from DJR a rail line extending between milepost 745.54, at/near Elwin, Ill., and milepost 749.94, in/near Decatur, Ill., a distance of approximately 4.4 miles in Macon County, Ill.; (2) PIONEER will continue in control of PRS when it becomes a Class III rail carrier, upon PRS's acquisition of the line; and (3) pursuant to a lease agreement with PRS, DJR will continue to operate the line.

According to Applicants, PRS and DJR are currently owned by PIONEER, which owns 100% of the common stock of 17 Class III rail carrier subsidiaries. Applicants also state that DJR currently owns the line and that PRS certifies that: (1) Its annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier; and (2) annual revenues on the line will not exceed $5 million. Pursuant to a written agreement that has not yet been executed, Applicants state that PRS will purchase the line from DJR and subsequently leaseback operating rights to DJR, which will continue to operate, maintain, and perform contract and common carrier service on the line. In addition, Applicants state that the agreement will contain no restrictions on interchange.

Unless stayed, the exemption will be effective on January 7, 2015 (30 days after the verified notice was filed).[1] Applicants state they propose to consummate the transaction on or about December 31, 2014. But the earliest the transaction may be consummated is after the January 7, 2015 effective date of the exemption.

According to Applicants, the purpose of this proposed transaction is to improve operating and administrative efficiencies within the corporate family.

The line transfer is a transaction within a corporate family exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 31, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35887, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on the Applicants' representative, Daniel A. LaKemper, Esq., General Counsel, Pioneer Railcorp, 1318 S. Johanson Road, Peoria, Illinois 61607.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 19, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–30202 Filed 12–23–14; 8:45 am]

BILLING CODE 4915–01–P

[1] By letter filed December 8, 2014, Applicants supplemented its notice of exemption. Because Applicants supplemented its verified notice on December 8, 2014, that date is considered the filing date of the verified notice.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35886]

Illinois Railway, LLC—Lease and Operation Exemption—Rail Line of Peru Land Acquisition 2, LLC

Illinois Railway, LLC (IR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Peru Land Acquisition 2, LLC (PLA2), and to operate approximately 3.5 miles of rail line extending from a connection to IR on its western end, to the end of the track on its eastern end west of Illinois Route 251, all near Peru, in Bureau and LaSalle Counties, Ill. (the Peru City Track or the line).[1]

This transaction is related to a concurrently filed verified notice of exemption in Docket No. FD 35885, *Peru Land Acquisition 2, LLC—Acquisition Exemption—Rail Line of The City of Peru, Ill.,* in which PLA2 seeks Board approval to acquire the Peru City Track from the City of Peru, Ill., the line's current owner.

IR states that it currently operates over the Peru City Track under an arrangement with the City of Peru and that the proposed transaction will not result in any change in operations or service to customers.

IR states that the lease and operation agreement does not include any provision that would limit IR's future interchange of traffic on the line with a third-party connecting carrier.

IR certifies that its projected annual revenues as a result of this transaction will not result in IR's becoming a Class II or Class I rail carrier. IR further certified on December 2, 2014, that, pursuant to 49 CFR 1150.42(e), on that date it: (1) Posted notice of its intent to undertake the proposed transaction at the workplaces of IR employees on the Peru City Track; and (2) served a copy of the notice on the national office of the labor union representing IR employees on the Peru City Track.

IR states that it intends to consummate the proposed lease transaction on or after February 3, 2015. The transaction may be consummated on or after January 31, 2015, the effective date of the exemption.[2]

[1] According to IR, there are no mileposts associated with the line.

[2] Typically an exemption of this type would be effective 30 days after the exemption was filed (here, January 10, 2015). However, under 49 CFR 1150.42(e), the exemption cannot become effective until 60 days after notice has been provided to the employees on the line and the national offices of their labor unions and certification has been provided to the Board, all of which occurred here on December 2, 2014.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than January 23, 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35886, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: December 19, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2014–30203 Filed 12–23–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2014.

The Department of the Treasury will submit the following information collection requests 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, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 23, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.* Comments may become part of the public record.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

United States Mint

OMB Number: 1525–0013.

Type of Review: Extension without change of a currently approved collection.

Title: Application for Intellectual Property Use (Mint Form 3045).

Form: Form 3045.

Abstract: The application form allows individuals and entities to apply for permissions and licenses to use United States Mint owned or controlled intellectual property.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 84.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–30185 Filed 12–23–14; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2014.

The Department of the Treasury 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, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 23, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0028.

Type of Review: Revision of a currently approved collection.

Title: The Community Development Financial Institutions Program—Certification Application.

Form: CDFI Form 0005.

Abstract: The certification application will be used to determine whether an entity seeking CDFI certification or recertification meets the Fund's requirements for such certification as set forth in 12 CFR 1805.201.

Affected Public: Private Sector: Not-for-profit institutions; State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 6,563.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014–30097 Filed 12–23–14; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting the public to nominate financial institutions and trade groups for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by January 23, 2015.

ADDRESSES: Applications must be emailed to *BSAAG@fincen.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 800–767–2825.

SUPPLEMENTARY INFORMATION: The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions and trade groups. New members will be selected to serve a three-year term and must designate one individual to represent that member at plenary meetings. The designated representative should be knowledgeable about Bank Secrecy Act requirements and must be able and willing to make the necessary time commitment to participate on subcommittees throughout the year by phone and attend biannual plenary meetings held in Washington DC the second Wednesday of May and October.

It is important to provide complete answers to the following items, as applications will be evaluated on the information provided through this application process. Applications should consist of:

• Name of the organization requesting membership

• Point of contact, title, address, email address and phone number

• Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.*

• Reasons why the organization's participation on the BSAAG will bring value to the group

Organizations may nominate themselves, but applications for individuals who are not representing an organization will not be considered. Members will not be remunerated for their time, services, or travel. In making the selections, FinCEN will seek to complement current BSAAG members in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and does not limit consideration to institutions nominated by the public when making selections.

Dated: December 15, 2014.

Jennifer Shasky Calvery,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2014–29846 Filed 12–23–14; 8:45 am]

BILLING CODE 4810–02–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.

DATED: Comments must be submitted on or before January 23, 2015.

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. 2900–0101'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

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. 2900–0101'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports (EVR).

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law and Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

c. Old Law and Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

d. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

e. DIC Parent's Eligibility Verification Report, VA Forms 21–0514 and 21–0514–1.

f. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21–0516 and 21–0516–1.

g. Improved Pension Eligibility Verification Report (Veteran With Children), VA Forms 21–0517 and 21–0517–1.

h. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21–0518 and 21–0518–1.

i. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21–0519C and 21–0519C–1.

j. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21–0519S and 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses EVR forms to verify a claimant's continued entitlement to benefits. Claimants who applied for or receives Improved Pension or Parents' Dependency and Indemnity Compensation must promptly notify VA in writing of any changes in entitlement factors. EVRs are required annually by beneficiaries whose social security number (SSN) or whose spouse's SSN is not verified, or who has income other than Social Security. Recipients of Old Law and Section 306 Pension are no longer required to submit annual EVRs unless there is a change in their income.

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 October 2, 2014, at pages 59559–59560.

Affected Public: Individuals or households.

Estimated Annual Burden: 113,075 hours. The annual burden for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 98,775 and 14,300 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Estimated Average Burden per Respondent: The estimated burden respondent for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 30 minutes and 40 minutes for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Frequency of Response: Annually.

Estimated Number of Respondents: 219,000. The number of respondents for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 197,550 and 21,450 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Dated: December 18, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–30056 Filed 12–23–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 247 December 24, 2014

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 43

Federal Reserve System

12 CFR Part 244

Federal Deposit Insurance Corporation

12 CFR Part 373

Federal Housing Finance Agency

12 CFR Part 1234

Securities and Exchange Commission

17 CFR Part 246

Department of Housing and Urban Development

24 CFR Part 267

Credit Risk Retention; Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 43

[Docket No. OCC–2013–0010]

RIN 1557–AD40

FEDERAL RESERVE SYSTEM

12 CFR Part 244

[Docket No. R–1411]

RIN 7100–AD70

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 373

RIN 3064–AD74

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1234

RIN 2590–AA43

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 246

[Release No. 34–73407; File No. S7–14–11]

RIN 3235–AK96

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 267

RIN 2501–AD53

Credit Risk Retention

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); U.S. Securities and Exchange Commission (Commission); Federal Housing Finance Agency (FHFA); and Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, Commission, FHFA, and HUD (the agencies) are adopting a joint final rule (the rule, or the final rule) to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934, as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act or Dodd-Frank Act). Section 15G generally requires the securitizer of asset-backed securities to retain not less than 5 percent of the credit risk of the assets collateralizing the asset-backed securities. Section 15G includes a variety of exemptions from these requirements, including an exemption for asset-backed securities that are collateralized exclusively by residential mortgages that qualify as ''qualified residential mortgages,'' as such term is defined by the agencies by rule.

DATES: *Effective date:* The final rule is effective February 23, 2015.

Compliance dates: Compliance with the rule with respect to asset-backed securities collateralized by residential mortgages is required beginning December 24, 2015. Compliance with the rule with regard to all other classes of asset-backed securities is required beginning December 24, 2016.

FOR FURTHER INFORMATION CONTACT:

OCC: Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 649–5490, 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: April C. Snyder, Senior Counsel, (202) 452–3099; Brian P. Knestout, Counsel, (202) 452–2249; Flora H. Ahn, Counsel, (202) 452–2317; David W. Alexander, Senior Attorney, (202) 452–2877; or Matt Suntag, Attorney, (202) 452–3694, Legal Division; Thomas R. Boemio, Manager, (202) 452–2982; Donald N. Gabbai, Senior Supervisory Financial Analyst, (202) 452–3358; or Sean M. Healey, Senior Financial Analyst, (202) 912–4611, Division of Banking Supervision and Regulation; Karen Pence, Adviser, Division of Research & Statistics, (202) 452–2342; or Nikita Pastor, Counsel, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

FDIC: Rae-Ann Miller, Associate Director, (202) 898–3898; George Alexander, Assistant Director, (202) 898–3718; Kathleen M. Russo, Supervisory Counsel, (703) 562–2071; or Phillip E. Sloan, Counsel, (703) 562–6137, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Commission: Arthur Sandel, Special Counsel; David Beaning, Special Counsel; Lulu Cheng, Special Counsel; or Katherine Hsu, Chief, (202) 551–3850, in the Office of Structured Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

FHFA: Ronald P. Sugarman, Principal Legislative Analyst, *Ron.Sugarman@fhfa.gov*, (202) 649–3208; Phillip Millman, Principal Capital Markets Specialist, *Phillip.Millman@fhfa.gov*, (202) 649–3080; or Thomas E. Joseph, Associate General Counsel, *Thomas.Joseph@fhfa.gov*, (202) 649–3076; Federal Housing Finance Agency, Constitution Center, 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

HUD: Michael P. Nixon, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 10226, Washington, DC 20410; telephone number 202–402–5216 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The agencies are adopting a final rule to implement the requirements of section 941 of the Dodd–Frank Act.[1] Section 15G of the Exchange Act, as added by section 941(b) of the Dodd-Frank Act, generally requires the Board, the FDIC, the OCC (collectively, the Federal banking agencies), the Commission, and, in the case of the securitization of any ''residential mortgage asset,'' together with HUD and FHFA, to jointly prescribe regulations that (i) require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party, and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G and the agencies' implementing rules.[2] Compliance with the final rule with respect to securitization transactions involving asset-backed securities collateralized by residential mortgages is required beginning one year after the date of publication in the **Federal Register** and with respect to securitization transactions involving all other classes of asset-backed securities is required beginning two years after the date of publication in the **Federal Register**. References in this Supplemental Information and the rule itself to the effective date of the rule (or similar references to the date on which the rule becomes effective) are to the date on which compliance is required.

Section 15G of the Exchange Act exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions. For example, section 15G specifically provides that a securitizer shall not be required to retain any part of the credit risk for an asset that is transferred, sold, or conveyed through the issuance of ABS interests by the securitizer, if all of the assets that collateralize the ABS interests are ''qualified residential mortgages'' (QRMs), as that term is jointly defined by the agencies, which definition can be ''no broader than'' the definition of a ''qualified mortgage'' (QM) as that term is defined under section 129C of the Truth in Lending Act (TILA),[3] as amended by the Dodd-Frank Act, and regulations adopted thereunder.[4] In addition, section 15G provides that a securitizer may retain less than 5 percent of the credit risk of commercial mortgages, commercial loans, and automobile loans that are transferred, sold, or conveyed through the issuance of ABS interests by the securitizer if the loans meet underwriting standards established by the Federal banking agencies.[5]

Section 15G allocates the authority for writing rules to implement its provisions among the agencies in various ways. As a general matter, the agencies collectively are responsible for adopting joint rules to implement the risk retention requirements of section 15G for securitizations that are collateralized by residential mortgage assets and for defining what constitutes a QRM for purposes of the exemption for QRM-backed ABS interests.[6] The Federal banking agencies and the Commission, however, are responsible for adopting joint rules that implement section 15G for securitizations collateralized by all other types of assets,[7] and are authorized to adopt rules in several specific areas under section 15G.[8] In addition, the Federal banking agencies are jointly responsible for establishing, by rule, underwriting standards for non-QRM residential mortgages, commercial mortgages, commercial loans, and automobile loans (or any other asset class established by the Federal banking agencies and the Commission) that would qualify sponsors of ABS interests collateralized by these types of loans for a risk retention requirement of less than 5 percent.[9] Accordingly, when used in this final rule, the term ''agencies'' shall be deemed to refer to the appropriate agencies that have rulewriting authority with respect to the asset class, securitization transaction, or other matter discussed.

For ease of reference, the final rule of the agencies is referenced using a common designation of section 1 to section 21 (excluding the title and part designations for each agency). With the exception of HUD, each agency is codifying the rule within its respective title of the Code of Federal Regulations.[10] Section 1 of each

[1] Public Law 111–203, 124 Stat. 1376 (2010). Section 941 of the Dodd-Frank Act amends the Securities Exchange Act of 1934 (the Exchange Act) and adds a new section 15G of the Exchange Act. 15 U.S.C. 78o–11.

[2] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B)(ii).

[3] 15 U.S.C. 1639c.

[4] *See* 15 U.S.C. 78o–11(c)(1)(C)(iii), (e)(4)(A) and (B).

[5] *See id.* at sections 78o–11(c)(1)(B)(ii) and (2).

[6] *See id.* at sections 78o–11(b)(2), (e)(4)(A) and (B).

[7] *See id.* at section 78o–11(b)(1).

[8] *See, e.g. id.* at sections 78o–11(b)(1)(E) (relating to the risk retention requirements for ABS collateralized by commercial mortgages); (b)(1)(G)(ii) (relating to additional exemptions for assets issued or guaranteed by the United States or an agency of the United States); (d) (relating to the allocation of risk retention obligations between a securitizer and an originator); and (e)(1) (relating to additional exemptions, exceptions or adjustments for classes of institutions or assets).

[9] *See id.* at section 78o–11(b)(2)(B).

[10] Specifically, the agencies codify the rule as follows: 12 CFR part 43 (OCC); 12 CFR part 244 (Regulation RR) (Board); 12 CFR part 373 (FDIC); 17 CFR part 246 (Commission); 12 CFR part 1234 (FHFA). As required by section 15G, HUD has jointly prescribed the final rule for a securitization that is collateralized by any residential mortgage asset and for purposes of defining a qualified residential mortgage. Because the final rule exempts the programs and entities under HUD's jurisdiction

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agency's rule identifies the entities or transactions subject to such agency's rule.

Consistent with section 15G of the Exchange Act, the risk retention requirements will become effective, for securitization transactions collateralized by residential mortgages, one year after the date on which the final rule is published in the **Federal Register**, and two years after the date on which the final rule is published in the **Federal Register** for any other securitization transaction.

In April 2011, the agencies published a joint notice of proposed rulemaking that proposed to implement section 15G of the Exchange Act (the ''original proposal'').[11] The agencies invited and received comment from the public on the original proposed rule. In September 2013, the agencies published a second joint notice of proposed rulemaking (the ''revised proposal'' or ''reproposal'') that proposed significant modifications to the original proposal and that again invited comment from the public.[12] As described in more detail below, the agencies are adopting the revised proposal with some changes in response to comments received.

As discussed further below, the final rule retains the framework of the revised proposal. Unless an exemption under the rule applies, sponsors of securitizations that issue ABS interests must retain risk in accordance with the standardized risk retention option (an eligible horizontal residual interest (as defined in the rule) or an eligible vertical interest (as defined in the rule) or a combination of both) or in accordance with one of the risk retention options available for specific types of asset classes, such as asset-backed commercial paper (ABCP). The final rule includes, with some modifications, those exemptions set forth in the revised proposal, including for QRMs. In addition, in response to comments and for the reasons discussed in Part VII of this Supplementary Information, the agencies are providing an additional exemption from risk retention for certain types of community-focused residential mortgages that are not eligible for QRM status under the final rule and are exempt from the ability-to-pay rules under the TILA.[13] The agencies are not exempting managers of certain collateralized loan obligations (CLOs) from risk retention, as requested by commenters, for the reasons discussed in Part III.B.7 of this Supplementary Information.

The agencies have made adjustments and modifications to the risk retention and underwriting requirements, as discussed in further detail below. Of particular note, under the final rule, the agencies are not adopting the proposed requirement that a sponsor holding an eligible horizontal residual interest be subject to the cash flow restrictions in the revised proposal or any similar cash flow restrictions. In addition, the agencies accepted commenters' views that a fair value calculation was not necessary for vertical retention and are not requiring the eligible vertical interest to be measured using fair value. The agencies are also making some adjustments to the disclosure requirements associated with the fair value calculation for an eligible horizontal residual interest. The final rule also includes a provision that requires the agencies to periodically review the definition of QRM, the exemption for certain community-focused residential mortgages, and the exemption for certain three-to-four unit residential mortgage loans and consider whether they should be modified, as discussed further below in Parts VI and VII of this Supplementary Information. The final rule also includes several adjustments and modifications to the proposed risk retention options for specific asset classes in order to address specific functional concerns and avoid unintended consequences.

A. Background

As the agencies observed in the preambles to the original and revised proposals, the securitization markets are an important link in the chain of entities providing credit to U.S. households and businesses, and state and local governments.[14] When properly structured, securitization provides economic benefits that can lower the cost of credit.[15] However, when incentives are not properly aligned and there is a lack of discipline in the credit origination process, securitization can result in harmful consequences to investors, consumers, financial institutions, and the financial system.

During the financial crisis, securitization transactions displayed significant vulnerabilities arising from inadequate information and incentive misalignment among various parties involved in the process.[16] Investors did not have access to the same information about the assets collateralizing asset-backed securities as other parties in the securitization chain (such as the sponsor of the securitization transaction or an originator of the securitized loans).[17] In addition, assets were resecuritized into complex instruments, which made it difficult for investors to discern the true value of, and risks associated with, an investment in the securitization, as well as exercise their rights in the instrument.[18] Moreover, some lenders loosened their underwriting standards, believing that the loans could be sold through a securitization by a sponsor, and that both the lender and sponsor would retain little or no continuing exposure to the loans.[19] Arbitrage between various markets and market participants, and in particular between the Enterprises and the private securitization markets, resulted in lower underwriting standards which undermined the quality of the instruments collateralized by such loans and ultimately the health of the financial markets and their participants.[20]

Congress intended the risk retention requirements mandated by section 15G to help address problems in the securitization markets by requiring that securitizers, as a general matter, retain an economic interest in the credit risk of the assets they securitize. By requiring that a securitizer retain a portion of the credit risk of the securitized assets, the requirements of section 15G provide securitizers an incentive to monitor and ensure the quality of the securitized assets

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from the requirements of the final rule, HUD does not codify the rule into its title of the Code of Federal Regulations.

[11] Credit Risk Retention; Proposed Rule, 76 FR 24090 (April 29, 2011).

[12] Credit Risk Retention; Proposed Rule, 78 FR 57928 (September 20, 2013).

[13] 15 U.S.C. 1639c.

[14] Securitization may reduce the cost of funding, which is accomplished through several different mechanisms. For example, firms that specialize in originating new loans and that have difficulty funding existing loans may use securitization to access more-liquid capital markets for funding. In addition, securitization can create opportunities for more efficient management of the asset–liability duration mismatch generally associated with the funding of long-term loans, for example, with short-term bank deposits. Securitization also allows the structuring of securities with differing maturity and credit risk profiles from a single pool of assets that appeal to a broad range of investors. Moreover, securitization that involves the transfer of credit risk allows financial institutions that primarily originate loans to particular classes of borrowers, or in particular geographic areas, to limit concentrated exposure to these idiosyncratic risks on their balance sheets.

[15] *Report to the Congress on Risk Retention,* Board of Governors of the Federal Reserve System, at 8 (October 2010), *available at http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf* (Board Report).

[16] *See* Board Report at 8–9.

[17] *See* S. Rep. No. 111–176, at 128 (2010).

[18] *See id.*

[19] *See id.*

[20] *See, e.g.,* Viral V. Acharya, Governments as Shadow Banks: The Looming Threat to Financial Stability, at 32 (Sept. 2011), *available at http://www.federalreserve.gov/events/conferences/2011/rsr/papers/Acharya.pdf.*

underlying a securitization transaction, and, thus, help align the interests of the securitizer with the interests of investors. Additionally, in circumstances where the securitized assets collateralizing the ABS interests meet underwriting and other standards designed to help ensure the securitized assets pose low credit risk, the statute provides or permits an exemption.[21]

Accordingly, the credit risk retention requirements of section 15G are an important part of the legislative and regulatory efforts to address weaknesses and failures in the securitization process and the securitization markets. Section 15G also complements other parts of the Dodd-Frank Act intended to improve the securitization markets. Such other parts include provisions that strengthen the regulation and supervision of nationally recognized statistical rating organizations (NRSROs) and improve the transparency of credit ratings; [22] provide for issuers of registered asset-backed securities offerings to perform a review of the securitized assets underlying the asset-backed securities and disclose the nature of the review; [23] require issuers of asset-backed securities to disclose the history of the requests they received and repurchases they made related to their outstanding asset-backed securities; [24] prevent sponsors and certain other securitization participants from engaging in material conflicts of interest with respect to their securitizations; [25] and require issuers of asset-backed securities to disclose, for each tranche or class of security, information regarding the assets collateralizing that security, including asset-level or loan-level data, if such data is necessary for investors to independently perform due diligence.[26] Additionally, various efforts regarding mortgage servicing should also have important benefits for the securitization markets.[27]

The original proposal provided several options from which sponsors could choose to meet section 15G's risk retention requirements, including retention of either a 5 percent ''vertical'' interest in each class of ABS interests issued in the securitization or a 5 percent ''horizontal'' first-loss interest in the securitization, and other options designed to reflect market practice in asset-backed securitization transactions. The original proposal also included a special ''premium capture'' mechanism designed to prevent a sponsor from structuring a securitization transaction in a manner that would allow the sponsor to offset or minimize its retained economic exposure to the securitized assets.

As required by section 15G, the original proposal provided a complete exemption from the risk retention requirements for asset-backed securities that are collateralized solely by QRMs and established the terms and conditions under which a residential mortgage would qualify as a QRM.[28] The original proposal would generally have prohibited QRMs from having product features that were observed to contribute significantly to the high levels of delinquencies and foreclosures since 2007 and included underwriting standards associated with lower risk of default. The original proposal also provided that sponsors would not have to hold risk retention for securitized commercial, commercial real estate, and automobile loans that met proposed underwriting standards. In the original proposal, the agencies specified that securitization transactions sponsored by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (jointly, the Enterprises) would meet risk retention requirements for as long as the Enterprises operated under the conservatorship or receivership of FHFA with capital support from the United States.

In response to the original proposal, the agencies received comments from over 10,500 persons, institutions, or groups. A significant number of comments supported the proposed menu-based approach of providing sponsors flexibility to choose from a number of permissible forms of risk retention, although several requested more flexibility in selecting risk retention options, including using multiple options simultaneously. Many commenters expressed significant concerns with the proposed standards for horizontal risk retention and the ''premium capture'' mechanism. Other commenters expressed concerns with respect to standards in the original proposal for specific asset classes and underwriting standards for non-residential asset classes and the application of the original proposal to managers of certain CLO transactions. A majority of commenters opposed the agencies' proposed QRM standard, and several asserted that the agencies should align the QRM definition with the QM definition, then under development by the Consumer Financial Protection Bureau (CFPB).[29]

The agencies considered the many comments received on the original proposal and engaged in additional analysis of the securitization and lending markets in light of the comments. The agencies subsequently issued the reproposal in September 2013, modifying significant aspects of the original proposal and again inviting public comment on the revised design of the risk retention regulatory framework to help determine whether the revised framework was appropriately structured.

B. Overview of the Revised Proposal and Public Comment

The agencies proposed in 2013 a risk retention rule that would have retained much of the structure of the original proposal, but with more flexibility in how risk retention could be held and with a broader definition of QRM.[30]

Among other things, the revised proposal provided a variety of options for complying with a minimum 5 percent risk retention requirement, an exemption from risk retention for residential mortgage loans meeting the QRM standard, and exemptions from risk retention for auto, commercial real estate, and commercial loans that met proposed underwriting standards. With respect to the standard risk retention option, the revised proposal provided sponsors with additional flexibility in complying with the regulation. The revised proposal permitted a sponsor to satisfy its obligation by retaining any combination of an ''eligible vertical interest'' with a pro rata interest in all ABS interests issued and a first-loss ''eligible horizontal residual interest'' to meet the 5 percent minimum requirement. A sponsor using solely the vertical interest option would retain a single security or a portion of each class of ABS interests issued in the securitization equal to at least 5 percent of all interests, regardless of the nature of the interests themselves (for example, whether such interests were senior or subordinated). The agencies also proposed that the eligible horizontal residual interest be measured using fair

[21] *See* 15 U.S.C. 78o–11(c)(1)(B)(ii), (e)(1)–(2).

[22] *See, e.g.* sections 932, 935, 936, 938, and 943 of the Dodd-Frank Act (15 U.S.C. 78o–7, 78o–8).

[23] *See* section 945 of the Dodd-Frank Act (15 U.S.C. 77g).

[24] *See* section 943 of the Dodd-Frank Act (15 U.S.C. 78o–7).

[25] *See* section 621 of the Dodd-Frank Act (15 U.S.C. 77z–2a).

[26] See section 942(b) of the Dodd-Frank Act (15 U.S.C. 77g(c)).

[27] *See, e.g.,* Mortgage Servicing Rules Under the Real Estate Settlement Act (Regulation X); Final Rule, 78 FR 10696 (Feb. 14, 2013).

[28] See Original Proposal, 76 FR at 24117–24129 and 24164–24167.

[29] *See* 78 FR 6407 (January 30, 2013), as amended by 78 FR 35429 (June 12, 2013), 78 FR 44686 (July 24, 2013), and 78 FR 60382 (October 1, 2013) (collectively, ''Final QM rule'').

[30] *See* Revised Proposal, 78 FR 57928.

value. The agencies proposed a mechanism designed to limit payments to holders of an eligible horizontal residual interest, in order to prevent a sponsor from structuring a transaction so that the holder of the eligible horizontal residual interest could receive disproportionate payments with respect to its interest. In the revised proposal, sponsors were required to make a one-time cash flow projection based on fair value and certify to investors that its cash payment recovery percentages were not projected to be larger than the recovery percentages for all other ABS interests on any future payment date. The agencies also invited comment on an alternative proposal relating to the amount of principal payments received by the eligible horizontal residual interest. Under that alternative, the cumulative amount paid to an eligible horizontal residual interest on any payment date would not have been permitted to exceed a proportionate share of the cumulative amount paid to all ABS interests in the transaction.

The revised proposal also included asset class-specific options for risk retention with some modifications from the original proposal to better reflect existing market practices and operations. For example, with respect to revolving pool securitizations, the agencies removed a restriction from the original proposal that prohibited the use of the seller's interest risk retention option for master trust securitizations collateralized by non-revolving assets. With respect to ABCP conduits, the agencies made a number of modifications intended to allow the ABCP option to accommodate certain market practices discussed in the comments and to permit more flexibility on behalf of the originator-sellers and their majority-owned affiliates that finance through ABCP conduits. Similarly, the agencies modified the risk retention option designed for commercial mortgage-backed securities (CMBS) to allow for up to two third-party purchasers to retain the required risk retention interest, each taking a *pari passu* interest in an eligible horizontal residual interest.

Also responding to commenters' concerns, the revised proposal did not include the premium capture cash reserve account mechanism and ''representative sample'' option included in the original proposal. With respect to the premium capture cash reserve account mechanism, the agencies considered that using fair value to measure the standard risk retention amount would meaningfully mitigate the ability of a sponsor to evade the risk retention requirement through the use of improper deal structures intended to be addressed by the premium capture cash reserve account. With respect to the representative sample option in the original proposal, the agencies considered the comments received and eliminated the option in the revised proposal on the basis that such an option would be difficult to implement in a way that would not result in costs that outweighed its benefits.

The agencies retained, to a significant degree, standards for the expiration of the hedging and transfer restrictions in the regulation. The agencies decided in the reproposal to limit the sponsor's ability to have all or a portion of the required retention held by its affiliates to only a sponsor's majority-owned affiliates rather than all consolidated affiliates as would have been allowed in the original proposal. The agencies have included this approach in the final rule because it ensures that any loss suffered by the holder of risk retention will be suffered by either the sponsor or an entity in which the sponsor has a substantial economic interest. The agencies also largely carried over the terms of the original proposal with respect to securitizations collateralized by qualifying commercial, commercial real estate, or automobile loans, although modifications were proposed to reflect commenter observations and concerns, such as permitting junior liens to collateralize qualifying commercial loans, increasing the amortization period on commercial real estate loans to 30 years for multifamily residential qualified commercial real estate (QCRE) loans and 25 years for other QCRE loans, and amending the amortization standards for qualifying automobile loans.

The agencies also invited comment on new exemptions from risk retention for certain resecuritizations, seasoned loans, and certain types of securitization transactions with low credit risk. In addition, the agencies proposed a new risk retention option for CLOs, similar to the allocation to originator concept proposed for sponsors generally.

The agencies proposed to broaden and simplify the scope of the definition of a QRM in the revised proposal to align the definition with the definition of a QM under section 129C of the TILA [31] and its implementing regulations, as adopted by the CFPB.[32] As discussed in the revised proposal, the agencies concluded that a QRM definition that was aligned with the QM definition would meet the statutory goals and directive of section 15G of the Exchange Act to limit credit risk and preserve access to affordable credit, while at the same time facilitating compliance.

Along with this proposed approach to defining QRM, the agencies also invited comment on an alternative approach that would require that the borrower meet certain credit history criteria and that the loan be for a principal dwelling, meet certain lien requirements, and have a certain loan to value ratio.

The revised proposal included a provision excluding certain foreign sponsors of ABS interests from the risk retention requirements of section 15G of the Exchange Act, which did not differ materially from the corresponding provision in the original proposal.

In response to the revised proposal, the agencies received comments from more than 250 persons, institutions, or groups, including nearly 150 unique comment letters. The agencies received comments and observations on many aspects of the reproposed rule. Numerous commenters supported most aspects of the rule, but many suggested or asked for further modifications. As discussed in further detail below, a significant number of commenters commented on the agencies' use of fair value to measure risk retention. Commenters' key concerns included the timing of any fair value measurement and potential alternative methodologies to measuring risk retention. Many commenters also expressed concern about the proposed disclosure requirements for fair value, and some asked for a ''safe harbor'' from liability with respect to the disclosures.

As with the original proposal, a number of commenters on the revised proposal asserted that managers of open market CLOs are not ''securitizers'' within the definition in section 15G of the Exchange Act and should not be required to retain risk. In addition, commenters asked for an exemption from risk retention for CLOs that would meet certain structural criteria and for a new option to allow third-party investors in CLOs to hold risk retention instead of CLO managers. Commenters also generally opposed the agencies' proposed alternative for risk retention for open market CLOs in which a lead arranger in a syndicated loan was allowed to satisfy the risk retention requirement, asserting that this option was inconsistent with current market practice and that lead arranger banks would be hesitant to retain risk as proposed in the revised proposal without being allowed to hedge or transfer that risk because they would be

[31] 15 U.S.C. 1639c.

[32] *See* 78 FR 6407 (January 30, 2013), as amended by 78 FR 35429 (June 12, 2013) and 78 FR 44686 (July 24, 2013).

concerned about criticism from bank regulators.

The agencies' proposed definition of a QRM was also the subject of significant commentary. Overall, commenters supported the agencies' proposal to align the QRM definition with the QM definition. Several commenters asked that the QRM definition accommodate the use of blended pools of QRM and non-QRM loans. Other commenters sought more specific expansions of the definition, including an exemption for loans originated by community development financial institutions and other community-focused lenders that are exempt from the ability-to-repay requirements (and, as a result, do not qualify to be QMs under TILA), imposition of a less than 5 percent risk retention requirement for some loans that did not qualify for QM, and the inclusion of non-U.S. originated loans. Several commenters expressed concern with both the alignment of the QRM definition with the QM definition as well as the alternative, more restrictive, definition of QRM for which the agencies had invited comment, suggesting that the agencies use the definition of QRM in the original proposal.

Commenters expressed concerns on certain other aspects of the rule. Numerous commenters opposed the cash flow restrictions on the eligible horizontal residual interest option, making various assertions on impracticalities and impacts on different asset classes that could result from the restrictions. Commenters also expressed concerns about the scope of the seller's interest option for revolving pool securitization arrangements and whether it would comport with current market practices. With respect to CMBS, some commenters were concerned that the third-party purchaser options were too expansive, while other commenters asked for further reductions in the restrictions on B-piece risk retention. Commenters also asked for a number of modifications to the proposed underwriting standards for qualifying commercial, commercial real estate, and automobile loans, including an exemption for CMBS transactions where all the securitized assets are extensions of credit to one borrower or its affiliates.

C. Overview of the Final Rule

After considering all comments received in light of the purpose of the statute and concerns from investors and individuals seeking credit, and after engaging in additional analysis of the securitization and lending markets, the agencies have adopted the revised proposal with some modifications, as discussed below. The agencies are adopting the final QRM definition, as proposed, to mean a QM, as defined in section 129C of TILA [33] and its implementing regulations, as amended from time to time.[34] The agencies continue to believe that a QRM definition that aligns with the definition of a QM meets the statutory goals and directive of section 15G of the Exchange Act to protect investors and enhance financial stability, in part by limiting credit risk, while also preserving access to affordable credit and facilitating compliance. As discussed in further detail below, the agencies will review the definition of QRM periodically—beginning not later than four years after the effective date of the rule with respect to securitizations of residential mortgages, and every five years thereafter. These timeframes are designed to coordinate the agencies' review of the QRM definition with the timing of the CFPB's statutorily mandated assessment of QM, as well as to better ensure that the QRM definition continues to meet the goals and directive of section 15G. The final rule also provides that any of the agencies may request a review of the definition of QRM at any time as circumstances warrant.

In addition, the agencies are adopting the minimum risk retention requirement and risk retention options, with some modifications to address specific commenter concerns. As discussed in more detail below, and consistent with the revised proposal, the final rule applies a minimum 5 percent base risk retention requirement to all securitization transactions that are within the scope of section 15G of the Exchange Act and prohibits the sponsor from hedging or otherwise transferring its retained interest prior to the applicable sunset date. The final rule also allows a sponsor to satisfy its risk retention obligation by retaining an eligible vertical interest, an eligible horizontal residual interest, or any combination thereof as long as the amount of the eligible vertical interest and the amount of the eligible horizontal residual interest combined is no less than 5 percent. The amount of the eligible vertical interest is equal to the percentage of each class of ABS interests issued in the securitization transaction held by the sponsor as eligible vertical risk retention. The amount of eligible horizontal residual interest is equal to the fair value of the eligible horizontal residual interest divided by the fair value of all ABS interests issued in the securitization transaction. After considering the numerous comments received, the agencies have concluded that the proposed cash flow restriction on the eligible horizontal residual interest (as well as the alternative described in the reproposal) could lead to unintended consequences or have a disparate impact on some asset classes. The agencies have therefore decided not to include such restrictions under the final rule.

With respect to the proposed disclosure requirements related to the fair value calculation of eligible horizontal residual interests, the agencies continue to believe that it is important to the functioning of the final rule to ensure that investors and the markets, as well as regulators, are provided with key information about the methodologies and assumptions that are used by sponsors under the final rule to calculate the amount of their eligible horizontal residual interests in accordance with fair value standards. Because the agencies believe that disclosures of the assumptions inherent in fair value calculations are necessary to enable investors to make informed investment decisions, the agencies are generally retaining the proposed fair value disclosure requirements, with some modifications in response to commenter concern, as further discussed below.

Furthermore, as discussed in more detail below, the agencies are adopting the revised proposal's provisions for CMBS third-party purchasers with some modifications to respond to specific commenter concerns. In addition, the agencies are retaining the proposed five-year period during which transfer among qualified third-party purchasers of CMBS eligible horizontal residual interests that are retained in satisfaction of the final rule will not be permitted. The agencies are also adopting the proposed underwriting standards for commercial, commercial real estate, and automobile loans, with some minor adjustments to the commercial real estate underwriting standards as described below. The agencies are also adopting the revised proposal's treatment of allocation to originators, tender option bonds, and ABCP conduits, with some limited modifications, as described below. With respect to revolving pool securitizations—described in the reproposal as revolving master trusts—the agencies are adopting the reproposal with several refinements designed to expand availability of the seller's interest option. The final rule also contains the various proposed

[33] 15 U.S.C. 1639c.

[34] *See* Final QM rule.

exemptions for government-related transactions and certain resecuritizations from the revised proposal.

The agencies also, as proposed, are applying risk retention to CLO managers as ''securitizers'' of CLO transactions under section 15G of the Exchange Act and, as discussed in further detail below, are not adopting structural exemptions or third-party options as suggested by some commenters. After carefully considering comments, the suggested exemptions and alternatives, the purposes of section 15G of the Exchange Act, and the features and dynamics of CLOs and the leveraged loan market, the agencies have concluded that risk retention is appropriately applied to CLO managers and a structural exemption or third-party option would likely undermine the consistent application of the final rule. Furthermore, the agencies are retaining in the final rule the proposed alternative for open market CLOs whereby, for each loan purchased by the CLO, risk may be retained by a lead arranger. The agencies appreciate that this option may not reflect current practice, but have concluded that the option may provide a sound method for meaningful risk retention for the CLO market in the future.

D. Post-Adoption Interpretation and Guidance

The preambles to the original and revised proposals described the agencies' intention to jointly approve certain types of written interpretations concerning the scope of section 15G and the final rule issued thereunder. Several commenters on the original proposal, and some commenters on the reproposal, expressed concern about the agencies' process for issuing written interpretations jointly and the possible uncertainty about the interpretation of the rule that may arise due to this process.

The agencies have endeavored to provide specificity and clarity in the final rule to avoid conflicting interpretations or uncertainty. In the future, if the agencies determine that further guidance would be beneficial for market participants, the agencies may jointly publish interpretive guidance, as the Federal banking agencies have done in the past. In addition, the agencies note that market participants can, as always, seek guidance concerning the rule from their primary Federal banking regulator or, if such market participant is not a depository institution, the Commission. In light of the joint nature of the agencies' rule writing authority, the agencies continue to view the consistent application of the final rule as a benefit and intend to consult with each other when adopting staff interpretations or guidance on the final rule that would be shared with the public generally in order to attempt to achieve full consensus on such interpretations and guidance.[35] In order to facilitate this goal, the Federal banking agencies and the Commission intend to coordinate as needed to discuss pending requests for such interpretations and guidance, with the participation of HUD and FHFA when such agencies are among the appropriate agencies for such matters.

II. General Definitions and Scope

The original proposal defined several terms applicable to the overall rule. The original proposal provided that the proposed risk retention requirements would have applied to sponsors in securitizations that involve the issuance of ''asset-backed securities'' and defined the terms ''asset-backed security'' and ''asset'' consistent with the definitions of those terms in the Exchange Act. The original proposal noted that section 15G does not appear to distinguish between transactions that are registered with the Commission under the Securities Act of 1933 (the Securities Act) and those that are exempt from registration under the Securities Act. It further noted that the proposed definition of asset-backed security, which would have been broader than that in the Commission's Regulation AB,[36] included securities that are typically sold in transactions that are exempt from registration under the Securities Act, such as collateralized debt obligations (CDOs) and securities issued or guaranteed by an Enterprise. As a result, pursuant to the definitions in the original proposal, the proposed risk retention requirements would have applied to securitizers of offerings of asset-backed securities regardless of whether the offering was registered with the Commission under the Securities Act.

Under the original proposal, risk retention requirements would have applied to the securitizer in each ''securitization transaction,'' defined as a transaction involving the offer and sale of ABS interests by an issuing entity. The original proposal also explained that the term ''ABS interest'' would refer to all types of interests or obligations issued by an issuing entity, whether or not in certificated form, including a security, obligation, beneficial interest, or residual interest, but would not include interests, such as common or preferred stock, in an issuing entity that are issued primarily to evidence ownership of the issuing entity, and the payments, if any, which are not primarily dependent on the cash flows of the collateral held by the issuing entity.

Section 15G stipulates that its risk retention requirements be applied to a ''securitizer'' of an asset-backed security and, in turn, that a securitizer is either an issuer of an asset-backed security or a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate or issuer. The original proposal discussed the fact that the second prong of this definition is substantially identical to the definition of a ''sponsor'' of a securitization transaction in the Commission's Regulation AB[37] and defined the term ''sponsor'' in a manner consistent with the definition of that term in the Commission's Regulation AB.

As noted in the original proposal, the agencies believe that applying the risk retention requirement to the sponsor of the ABS interests—as provided by section 15G—is appropriate in light of the active and direct role that a sponsor typically has in arranging a securitization transaction and selecting the assets to be securitized. This role best situates the sponsor to monitor and control the credit quality of the securitized assets. In some cases, the transfer of assets by the sponsor will take place through a wholly-owned subsidiary of the sponsor that is often referred to as the ''depositor.'' As noted above, the definition of ''securitizer'' in section 15G(a)(3)(A) includes the ''issuer of an asset-backed security.'' The term ''issuer'' when used in the federal securities laws may have different meanings depending on the context in which it is used. For example, for several purposes under the federal securities laws, including the Securities Act[38] and the Exchange

[35] These items do not include interpretation and guidance in staff comment letters and other staff guidance directed to specific institutions that is not intended to be relied upon by the public generally. Nor do they include interpretations and guidance contained in administrative or judicial enforcement proceedings by the agencies, or in an agency report of examination or inspection or similar confidential supervisory correspondence.

[36] *See* 17 CFR 229.1100 through 17 CFR 229.1123.

[37] *See* Item 1101 of the Commission's Regulation AB (17 CFR 229.1101) (defining a sponsor as ''a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.'').

[38] Section 2(a)(4) of Securities Act (15 U.S.C. 77b(a)(4)) defines the term ''issuer'' in part to include every person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral trust certificates, or with respect to

Act[39] (of which section 15G is a part) and the rules promulgated under these Acts,[40] the term ''issuer'' when used with respect to a securitization transaction is defined to mean the entity—the depositor—that deposits the assets that collateralize the asset-backed securities with the issuing entity. As stated in the original proposal, the agencies interpret the reference in section 15G(a)(3)(A) to an ''issuer of an asset-backed security'' as referring to the ''depositor'' of the securitization transaction, consistent with how that term has been defined and used under the federal securities laws in connection with asset-backed securities.[41]

As noted above, the rule generally applies the risk retention requirements of section 15G to a sponsor of the securitization transaction. In many cases the depositor and the sponsor are the same legal entity; however, even in cases where the depositor and the sponsor are not the same legal entity, the depositor is a pass-through vehicle for the transfer of assets and is either controlled or funded by the sponsor. Therefore, under the rule, the definition of sponsor effectively includes the depositor of the securitization transaction, and should identify the party subject to the risk retention requirements for every securitization transaction. Therefore, in the agencies' view, applying the risk retention requirement to the sponsor, as defined in the rule, substantively aligns with the definition of ''securitizer'' in section 15G of the Exchange Act.

Other than issues concerning CLOs, which are discussed in Part III.B.7; issues concerning ABCP, which are discussed in Part III.B.4; and issues concerning sponsors of municipal bond repackagings, which are discussed in Part III.B.8 of this Supplementary Information, comments with regard to the definition of securitizer or sponsor were generally limited to requests that the final rule provide that certain specified persons—such as underwriting sales agents—be expressly excluded from the definition of securitizer or sponsor for the purposes of the risk retention requirements.

In response to comments received relating to various transaction parties requesting that the agencies either designate as sponsors, or clarify would meet the requirements of the definition of sponsor, the agencies are providing some guidance with respect to the definition of sponsor. The statute and the rule define a securitizer as a person who ''organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.''[42] The agencies believe that the organization and initiation criteria in both definitions are critical to determining whether a person is a securitizer or sponsor. The agencies are of the view that, in order to qualify as a party that organizes and initiates a securitization transaction and, thus, as a securitizer or sponsor, the party must have actively participated in the organization and initiation activities that would be expected to impact the quality of the securitized assets underlying the asset-backed securitization transaction, typically through underwriting and/or asset selection. The agencies believe this interpretation of the statutory language ''organize and initiate'' is reasonable because it further accomplishes the statutory goals of risk retention—alignment of the incentives of the sponsor of the securitization transaction with the investors and improvement in the underwriting and selection of the securitized assets. Without this active participation, the holder of retention could be merely a speculative investor, with no ability to influence underwriting or asset selection. In addition, the interests of a speculative investor may not be aligned with those of other investors. For example, another asset-backed security issuer would not meet the ''organization and initiation'' criteria in the definition of ''sponsor'' as such an entity could not be the party that actively makes decisions regarding asset selection or underwriting. Additionally, the agencies believe that a party who does not engage in this type of active participation would be a third-party holder of risk retention, which (with the narrow exception of a qualified third-party purchaser in a CMBS transaction) is not an acceptable holder of retention under the rule because the participation of such a party does not result in the more direct alignment of incentives achieved by requiring the party with underwriting or asset selection authority to retain risk. Thus, for example, an entity that serves only as a pass-through conduit for assets that are transferred into a securitization vehicle, or that only purchases assets at the direction of an independent asset or investment manager, only pre-approves the purchase of assets before selection, or only approves the purchase of assets after such purchase has been made would not qualify as a ''sponsor''. If such a person retained risk, it would be an impermissible third-party holder of risk retention for purposes of the rule, because such activities, in and of themselves, do not rise to the level of ''organization and initiation''. In addition, negotiation of underwriting criteria or asset selection criteria or merely acting as a ''rubber stamp'' for decisions made by other transaction parties does not sufficiently distinguish passive investment from the level of active participation expected of a sponsor or securitizer.

The original proposal would have defined the term ''originator'' in the same manner as section 15G, namely, as a person who, through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security, and sells the asset directly or indirectly to a securitizer (*i.e.,* a sponsor or depositor). The original proposal went on to note that because this definition refers to the person that ''creates'' a loan or other receivable, only the original creditor under a loan or receivable—and not a subsequent purchaser or transferee—would have been an originator of the loan or receivable for purposes of section 15G. The revised proposal kept the definition from the original proposal.

The original proposal referred to the assets underlying a securitization transaction as the ''securitized assets,'' meaning assets that are transferred to a special purpose vehicle (SPV) that issues the ABS interests and that stand as collateral for those ABS interests. ''Collateral'' was defined as the property that provides the cash flow for payment

certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions), the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued.

[39] *See* Exchange Act sec. 3(a)(8) (15 U.S.C. 78c(a)(8) (defining ''issuer'' under the Exchange Act).

[40] *See, e.g.,* Securities Act Rule 191 (17 CFR 230.191) and Exchange Act Rule 3b–19 (17 CFR 240.3b–19).

[41] For asset-backed securities transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For asset-backed securities transactions where the person transferring or selling the pool assets is itself a trust (such as in an issuance trust structure), the depositor of the issuing entity is the depositor of that trust. *See* section 2 of the final rule. Securities Act Rule 191 and Exchange Act Rule 3b–19 also note that the person acting as the depositor in its capacity as depositor to the issuing entity is a different ''issuer'' from that person in respect of its own securities in order to make clear—for example—that any applicable exemptions from Securities Act registration that person may have with respect to its own securities are not applicable to the asset-backed securities. That distinction does not appear relevant here because the risk retention rule would not be applicable to an issuance by such person of securities that are not asset-backed securities.

[42] *See* 15 U.S.C. 78o–11(a)(3)(B) and section 2 of the final rule, *infra.*

of the ABS interests issued by the issuing entity. Taken together, these definitions were meant to include the loans, leases, or similar assets that the depositor places into the issuing entity at the inception of the transaction, though it would have also included other assets such as pre-funded cash reserve accounts. Commenters to the original proposal stated that, in addition to this property, the issuing entity may hold other assets. For example, the issuing entity may acquire interest rate derivatives to convert floating rate interest income to fixed rate, or the issuing entity may accrete cash or other liquid assets in reserve funds that accumulate cash generated by the securitized assets. As another example, commenters stated that an ABCP conduit may hold a liquidity guarantee from a bank on some or all of its securitized assets. The agencies retained these definitions of securitized assets and collateral in the revised proposal.

Some commenters expressed concern with respect to the scope of the terms of the definitions of asset-backed securities, securitization transactions, and ABS interests in the original proposal and suggested specific exemptions or exclusions from their application. Similarly, a number of commenters requested clarification of the scope of the definition of ''ABS interest,'' or suggested narrowing the definition, while other commenters suggested an expansion of the scope of the ''securitization transaction'' definition. Comments with regard to definitions of securitizer and sponsor in the original proposal were generally limited to requests that specified persons be expressly excluded from, or included in, the definition of securitizer or sponsor for the purposes of the risk retention requirements. The agencies determined to leave the definitions of securitizer and sponsor substantially unchanged in the revised proposal. After consideration of all the comments on the original proposal, the agencies did not believe that significant changes to most definitions applicable throughout the proposed rule were necessary and, in the revised proposal, retained most definitions as originally proposed.

The agencies did add some substantive definitions to the revised proposal, including proposing a definition of ''servicing assets,'' which would be any rights or other assets designed to assure the servicing, timely payment, or timely distribution of proceeds to security holders, or assets related or incidental to purchasing or otherwise acquiring and holding the issuing entity's securitized assets. The agencies noted in the revised proposal that such assets may include cash and cash equivalents, contract rights, derivative agreements of the issuing entity used to hedge interest rate and foreign currency risks, or the collateral underlying the securitized assets. As provided in the reproposed rule, ''servicing assets'' also include proceeds of assets collateralizing the securitization transactions, whether in the form of voluntary payments from obligors on the assets or otherwise (such as liquidation proceeds). The agencies are adopting this definition substantially as reproposed in order to ensure that the provisions appropriately accommodate the need, in administering a securitization transaction on an ongoing basis, to hold various assets other than the loans or similar assets that are transferred into the asset pool by the securitization depositor. In this way, the definition is similar to the definition of ''eligible assets'' in Rule 3a–7 under the Investment Company Act of 1940, which specifies conditions under which the issuer of non-redeemable fixed-income securities collateralized by self-liquidating financial assets will not be deemed to be an investment company.

In light of the agencies' adoption of the QRM definition from the reproposal and the exemption for certain three-to-four unit residential mortgages (as discussed in section VII below), the agencies are modifying the proposed definition of ''residential mortgage'' to clarify that all loans secured by 1–4 unit residential properties will be ''residential mortgages'' for the purposes of the final rule and subject to the rule's provisions regarding residential mortgages (such as the sunset on hedging and transfer restrictions specific to residential mortgages) if they do not qualify for an exemption. Under the final rule, a residential mortgage would mean a residential mortgage that is a ''covered transaction'' as defined in the CFPB's Regulation Z; [43] any transaction that is specifically exempt from the definition of ''covered transaction'' under the CFPB's Regulation Z; [44] and, as a modification to the proposed definition, any other loan secured by a residential structure that contains one to four units, whether or not that structure is attached to real property, including condominiums, and if used as residences, mobile homes and trailers.[45] Therefore, the term ''residential mortgage'' would include home equity lines of credit, reverse mortgages, mortgages secured by interests in timeshare plans, temporary loans, and certain community-focused residential mortgages further discussed in Part VII of this Supplementary Information. It would also include mortgages secured by 1–4 unit residential properties even if the credit is deemed for business purposes under Regulation Z.

Many comments on the revised proposal were similar to, or repeated, the comments on the original proposal. Some commenters asked that specific definitions be added to the rule, such as eligible participation interest, owner's interest, and participant's interest. With respect to the definitions of securitizer and sponsor, several commenters on the revised proposal requested that the final rule expressly exempt, or include, certain categories or groups of persons—such as underwriting sales agents, multiple sponsors of transactions, affiliated entities, or, in the case of tender-option bonds and ABCP, brokers who acquire and securitize assets at the direction of a third party. Other commenters requested confirmation that certain categories of transactions would not qualify as a sale or transfer of an interest for purposes of the rule.

Three commenters requested that the agencies reconsider their decision to treat non-economic residual interests in real estate investment conduits (REMICS) as ABS interests, noting the potential negative tax consequences for sponsors of REMICS. Another commenter requested that lower-tier REMIC interests in tiered structures be exempted from treatment as ABS interests, and a separate commenter requested an express exclusion of REMIC residual interests entirely. One commenter again asserted that the definition of ''securitization transaction'' was overly broad because it would include a variety of corporate debt repackagings, which the commenter asserted should be expressly exempt from risk retention. One commenter requested clarification that issuers of securities collateralized by qualifying assets could hold hedging agreements, insurance policies, and other forms of credit enhancement as permitted by the Commission's Regulation AB. One commenter asked that the definition of commercial real estate be revised to include land loans, including loans made to owners of fee interests in land leased to third parties who own improvements on the land.

While the final rule generally retains the definitions in the revised proposal, to address the concerns raised by

[43] *See* 12 CFR 1026.43.

[44] *See* 12 CFR 1026.43.

[45] This addition to the definition is substantially similar to the CFPB's definition of ''dwelling'' in Regulation Z. *See* 12 CFR 1026.2(19).

commenters with respect to REMICs,[46] the agencies have modified the definition of ABS interest to exclude (i) a non-economic residual interest issued by a REMIC and (ii) an uncertificated regular interest in a REMIC that is held only by another REMIC, where both REMICs are part of the same structure and a single REMIC issues ABS interests to investors. The agencies do not believe that significant changes to the general definitions are necessary or appropriate in light of the purposes of the statute. All adjustments to the general definitions are discussed below in this Supplementary Information in the context of relevant risk retention options.

III. General Risk Retention Requirement

A. Minimum Risk Retention Requirement

Section 15G of the Exchange Act generally requires that the agencies jointly prescribe regulations that require a securitizer to retain not less than 5 percent of the credit risk for any asset that the securitizer, through the issuance of ABS interests, transfers, sells, or conveys to a third party, unless an exemption from the risk retention requirements for the securities or transaction is otherwise available (*e.g.,* if the ABS interests are collateralized exclusively by QRMs). Consistent with the statute, the reproposal generally would have required that a sponsor retain an economic interest equal to at least 5 percent of the aggregate credit risk of the assets collateralizing an issuance of ABS interests (the base risk retention requirement). For securitizations where two or more entities would each meet the definition of sponsor, the reproposal would have required that one of the sponsors retain the credit risk of the securitized assets in accordance with the requirements of the rule. Under the reproposal, the base risk retention requirement would have been available as an option to sponsors of all securitization transactions within the scope of the rule, regardless of whether the sponsor was an insured depository institution, a bank holding company or subsidiary thereof, a registered broker-dealer, or another type of entity.

Some comments addressed the proposed minimum risk retention requirement. One commenter expressed support for the proposed minimum requirement of 5 percent risk retention, asserting that such a requirement would promote higher quality lending, protect investor interests, and limit the originate-to-distribute business model. Other commenters requested a higher minimum risk retention requirement depending on asset quality. One commenter asserted that 5 percent should be the minimum and that the purpose of risk retention would be defeated by applying 5 percent to situations in which assets are sold at a discount from par. That commenter proposed that the requirement should be either (i) the greater of 5 percent or the expected losses on the assets or (ii) the greater of 5 percent or the conditional expected losses on the assets or asset class under a moderate economic stress environment. Another commenter stated that some sponsors hold less than 5 percent because of the high quality of some assets, and requiring 5 percent retention could potentially double costs in some instances. Another commenter asserted that retaining 5 percent may not be sufficient as many sponsors held more than 5 percent credit risk in their securitizations before the crisis. That same commenter stated that investors were likely to insist that originators retain some credit risk. One commenter proposed a minimum risk retention requirement of 20 percent, while another commenter requested that sponsors be required to hold 100 percent risk retention for a specified period of time. For securitizations where multiple entities each meet the definition of sponsor, one commenter stated that multiple sponsors should be permitted to allocate the required amount of risk retention among themselves, so long as the aggregate amount retained satisfies the requirements of the risk retention rules. Other commenters requested a lower minimum for pools that blend assets that would be exempt from risk retention by meeting the proposed underwriting standards with assets not meeting the standards, which is discussed in further detail in Part V of this Supplementary Information.

After careful consideration of the comments received, the agencies are adopting the minimum risk retention requirement as proposed. Consistent with the reproposal and the general requirement in section 15G of the Exchange Act, the final rule applies a minimum 5 percent base risk retention requirement to all securitization transactions within the scope of section 15G, unless an exemption under the final rule applies.[47] The agencies believe that this requirement will provide sponsors with an incentive to monitor and control the underwriting of securitized assets and help align the interests of the sponsor with those of investors in the ABS interests. The agencies note that, while Congress directed that the rule include a risk retention requirement of no less than 5 percent of the credit risk for any asset, parties to a securitization transaction may agree that more risk will be retained. While some commenters asked that the rule calibrate the credit risk on an asset class basis (*i.e.,* make a determination that the credit risk associated with certain asset classes is lower than for other asset classes), the agencies are declining to do that at this time because the data provided by commenters do not provide a sufficient basis for the calibration of credit risk on an asset class basis.[48] For securitizations where two or more entities would each meet the definition of sponsor, the final rule requires that one of the sponsors complies with the rule, consistent with the original and revised proposals. The final rule does not prohibit multiple sponsors from retaining credit risk as long as one of those sponsors complies with the requirements of the final rule. The agencies are not allowing sponsors to divide the required risk retention generally because allowing multiple sponsors to divide required risk retention among themselves would dilute the economic risk being retained and, as a result, reduce the intended alignment of interest between the sponsor and the investors.

The agencies do not believe that it is necessary or appropriate to attempt to vary the amount of risk retention based on the quality of the assets or other factors and believe that attempting to do so would unnecessarily complicate compliance with the rule. As discussed below, the agencies are adopting the requirement that an eligible horizontal

[46] Some commenters expressed concern that including REMICs in the ABS interest definition would create tax liabilities unrelated to the credit risk of the underlying collateral and would likely reduce the intended impact of the risk retention rules since non-economic residual interests usually have a negative value.

[47] *See* final rule at sections 3 through 10. Similar to the proposal, the final rule, in some instances, permits a sponsor to allow another person to retain the required amount of credit risk (*e.g.,* originators, third-party purchasers in CMBS transactions, and originator-sellers in ABCP conduit securitizations). However, in such circumstances, the final rule includes limitations and conditions designed to ensure that the purposes of section 15G continue to be fulfilled. Further, even when another person is permitted to retain risk, the sponsor still remains responsible under the rule for compliance with the risk retention requirements, as discussed below.

[48] As required by section 15G, the agencies have established automobile, commercial real estate, and commercial loan asset classes and related underwriting standards designed to ensure a low credit risk for assets originated to those standards. The agencies provided for zero risk retention for loans meeting the prescribed underwriting standards.

residual interest be measured at fair value using a fair value methodology acceptable under U.S. generally accepted accounting principles (GAAP). The agencies believe that generally requiring that retention be 5 percent of the fair value of the ABS interests issued in the securitization transaction will sufficiently calibrate the actual amount of retention to the value of the assets, including how that value may be affected by expected losses. In addition, subject to limited exceptions, such as that applicable to transfers of CMBS interests among qualified third-party purchasers after five years, transfers to majority-owned affiliates, and certain permitted hedging activities, the final rule prohibits the sponsor from hedging or otherwise transferring its retained interest prior to the applicable sunset date, as discussed in Part IV.F of this Supplementary Information.

The agencies note that the base risk retention requirement is a regulatory minimum and not a limit on what investors or other market participants may require. The sponsor, originator, or other party to a securitization may retain additional exposure to the credit risk of assets that the sponsor, originator, or other party helps securitize beyond that required by the rule, either on its own initiative or in response to the demands or requirements of private market participants.

B. Permissible Forms of Risk Retention—Menu of Options

Section 15G of the Exchange Act expressly provides the agencies the authority to determine the permissible forms through which the required amount of risk retention must be held.[49] Accordingly, the reproposal, like the original proposal, would have provided sponsors with multiple options to satisfy the risk retention requirements of section 15G. The flexibility provided in the reproposal's menu of options for complying with the risk retention requirement was designed to take into account the heterogeneity of securitization markets and practices and to reduce the potential for the proposed rules to negatively affect the availability and costs of credit to consumers and businesses. As proposed, the menu of options approach was designed to be consistent with the various ways in which a sponsor or other entity, in historical market practices, may have retained exposure to the credit risk of securitized assets.[50] Historically, whether or how a sponsor retained exposure to the credit risk of the assets it securitized was determined by a variety of factors including the rating requirements of the NRSROs, investor preferences or demands, accounting and regulatory capital considerations, and whether there was a market for the type of interest that might ordinarily be retained (at least initially by the sponsor).

Commenters generally supported the menu-based approach of providing sponsors with the flexibility to choose from a number of permissible forms of risk retention. While commenters were generally supportive of a menu-based approach, several commenters requested that the final rule provide additional options and increased flexibility for sponsors to comply with the risk retention requirement. In this regard, several commenters asserted that the final rule should permit third-party credit support as additional forms of risk retention, including insurance policies, guarantees, liquidity facilities, and standby letters of credit. One commenter stated that such unfunded forms of credit support are permitted by the European risk retention framework and allowing similar options would provide greater consistency between the U.S. and European rules. This commenter further contended that the final rule, at a minimum, should permit such forms of unfunded risk retention for a subset of sponsors, such as regulated banks. A few commenters requested that overcollateralization be permitted as an alternative method of risk retention. Further, the agencies received several comments requesting that the final rule include an option allowing retention to be held in the form of interests in the securitized assets themselves. Along these lines, several commenters sought additional flexibility under the rule to hold risk retention as loan participation interests or companion notes instead of an ABS interest. One commenter stated that, while the use of participations in securitization transactions may not currently be customary, sponsors may find such a structure advantageous in connection with the risk retention requirements. A few commenters said that *pari passu* participation interests and structures using *pari passu* companion notes have been used in certain types of CMBS transactions. Other commenters requested that the final rule allow for subordinated participation interests. These commenters said *pari passu* participations should qualify as vertical risk retention and subordinate participation interests should qualify as horizontal risk retention. The main reason cited by these commenters for expanding the forms of risk retention recognized under the rule to include this form of retention, other than future flexibility as to form, was the possibility that the sponsor could hold the same economic exposure it would have as an ABS interest form of risk retention, while at the same time incurring lower regulatory capital charges for that exposure by holding it as a loan, and avoiding consolidation of the structure onto its balance sheet. Another commenter suggested that the availability of a participation option may be important for commercial banks because of their existing infrastructure to share risk on a *pari passu* basis.

One commenter stated that the final rule should provide more flexibility by allowing sponsors to satisfy their risk retention requirement through a combination of means and that the rule should not mandate forms of risk retention for specific types of asset classes or specific types of transactions.

The agencies have carefully considered the comments and are adopting the proposed menu of options approach to risk retention largely as proposed. The agencies continue to believe that providing options for risk retention is appropriate in order to accommodate the variety of securitization structures that will be subject to the final rule and that the menu of options, as proposed, provides sufficient flexibility for sponsors to satisfy their risk retention obligations.

After carefully considering the comments requesting loan interests, such as loan participations, as an option, the agencies have decided not to expand the recognized legal forms of risk retention under the rule beyond ABS interests by including *pari passu* participation interests, subordinated participation interests, *pari passu* companion notes, or subordinated companion notes. The agencies are permitting specialized forms of participations for two particular asset classes as discussed below in connection with CLO securitizations and tender option bonds, subject to several requirements under the rule. However, the agencies believe that the rule already provides sufficient flexibility as to the economic forms of risk retention and an additional form of

[49] *See* 15 U.S.C. 78o–11(c)(1)(C)(i); *see also* S. Rep. No. 111–176, at 130 (2010) (''The Committee [on Banking, Housing, and Urban Affairs] believes that implementation of risk retention obligations should recognize the differences in securitization practices for various asset classes.'').

[50] *See* Board Report; *see also Macroeconomic Effects of Risk Retention Requirements,* Chairman of the Financial Stability Oversight Counsel (January 2011), *available at http://www.treasury.gov/initiatives/wsr/Documents/Section946RiskRetentionStudy(FINAL).pdf.*

risk retention is not necessary. The agencies are concerned that offering different legal forms, such as participation interests or companion loans, as a standard option would introduce substantial complexity to the rule in order to ensure that these forms of retention were implemented in a way that ensured that the holder had the same economic exposure as the holder of an ABS interest. In addition, given the commenters' reasons for requesting that these options be made available, the agencies are concerned that permitting these types of interests to be held as retention could raise concerns about regulatory capital arbitrage.

The agencies do not believe it would be appropriate to allow sponsors to satisfy risk retention obligations through third-party credit support, such as insurance policies, guarantees, liquidity facilities, or standby letters of credit. As discussed in the reproposal, such forms of credit support generally are not funded at closing and therefore may not be available to absorb losses at the time they occur. Except in the case of the guarantees from the Enterprises under the conditions specified, which include the Enterprises' operating in conservatorship or receivership with capital support from the United States, the agencies continue to believe that unfunded forms of risk retention fail to provide sufficient alignment of incentives between sponsors and investors and are not including them as eligible forms of risk retention.

The final rule does not permit overcollateralization as a standard method of risk retention. While overcollateralization may provide credit enhancement to a securitization, the agencies do not believe that a credit risk retention option based solely on a comparison of the face value [51] of the securitized assets and the face value of the ABS interests would provide meaningful risk retention consistent with the goals and intent of section 15G because the face value of both the securitized assets and the face value of the ABS interests can materially differ from their relative value and/or cost to the sponsor.[52] Moreover, the fair value of an eligible horizontal residual interest takes into consideration the overcollateralization and excess spread in a securitization transaction as adjusted by expected loss and other factors. Further, for the reasons discussed in Part III.B.3 of this Supplementary Information, the final rule does not include a representative sample option.

As in the reproposal, the permitted forms of risk retention in the final rule are subject to terms and conditions that are intended to help ensure that the sponsor (or other eligible entity) retains an economic exposure equivalent to 5 percent of the credit risk of the securitized assets at a minimum. As described below, the final rule includes several modifications to the various forms of risk retention, as well as the terms and conditions that were proposed, to help ensure that sponsors have a meaningful stake in the overall performance and repayment of the assets that they securitize. Each of the forms of risk retention permitted by the final rule and the measures intended to ensure that sponsors retain meaningful credit risk are described below.

1. Standard Risk Retention

a. Structure of Standard Risk Retention Option

Under the revised proposal, standard risk retention could have been used by a sponsor for any securitization transaction.[53] Standard risk retention could have taken the form of: (i) Vertical risk retention; (ii) horizontal risk retention; and (iii) any combination of vertical and horizontal risk retention.[54] Under the reproposal, a sponsor would have been permitted to satisfy its risk retention obligation by retaining an eligible vertical interest, an eligible horizontal residual interest, or any combination thereof, in a total amount equal to no less than 5 percent of the fair value of all ABS interests in the issuing entity that are issued as part of the securitization transaction.

Through the vertical option, the reproposal would have allowed a sponsor to satisfy its risk retention obligation with respect to a securitization transaction by retaining at least 5 percent of the fair value of each class of ABS interests issued as part of the securitization transaction. This would provide the sponsor with an interest in the entire securitization transaction. As an alternative, the reproposal would have allowed a sponsor to satisfy its risk retention requirement under the vertical option by retaining a single vertical security. As discussed in the reproposal, a single vertical security would be an ABS interest entitling the holder to a specified percentage (*e.g.,* 5 percent) of the principal and interest paid on each class of ABS interests in the issuing entity (other than such single vertical security) that result in the security representing the same percentage of fair value of each class of ABS interests.

Under the reproposal, a sponsor also would have been permitted to satisfy its risk retention obligation by retaining an eligible horizontal residual interest in the issuing entity in an amount equal to no less than 5 percent of the fair value of all ABS interests in the issuing entity that are issued as part of the securitization transaction. In lieu of holding all or part of its risk retention in the form of an eligible horizontal residual interest, the reproposal would have allowed a sponsor to cause to be established and funded, in cash, a reserve account at closing (eligible horizontal cash reserve account) in an amount equal to the same dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable) as would be required if the sponsor held an eligible horizontal residual interest.[55]

As reproposed, an interest would have qualified as an eligible horizontal residual interest only if it was an interest in a single class or multiple classes in the issuing entity with respect to which, on any payment date on which the issuing entity would have insufficient funds to satisfy its obligation to pay all contractual interest or principal due, any resulting shortfall would reduce amounts paid to the eligible horizontal residual interest prior to any reduction in the amounts paid to any other ABS interest until the amount of such ABS interest is reduced to zero. The eligible horizontal residual interest would have been required to have the most subordinated claim to payments of both principal and interest by the issuing entity.

Many commenters generally supported the reproposal to allow a sponsor to meet its risk retention

[51] The agencies are using the term ''face value'' to mean the outstanding principal balance of a loan or other receivable or an ABS interest and, with respect to an asset that does not have a stated principal balance, it means an equivalent value measurement, such as securitization value.

[52] The agencies have adopted a risk retention option for revolving pool securitizations that relies heavily on a comparison of the face value of the securitized assets and the face value of the ABS interests. However, reliance on the seller's interest option is limited to revolving pool securitizations that include certain structural features and alignment of incentives to address many of the concerns the agencies had with respect to the reliance on face value to measure required credit risk retention. See Part III.B.2 of this Supplementary Information.

[53] As discussed above, in the original proposal, a sponsor using standard risk retention would have had to choose between a 5 percent horizontal interest, 5 percent vertical interest, or a combination of horizontal and vertical interests that was approximately half horizontal and half vertical. The agencies reproposed standard risk retention with a more flexible structure in response to concerns raised by commenters on the original proposal. *See* Revised Proposal, 78 FR at 57937.

[54] *See* Revised Proposal, 78 FR at 57937.

[55] *See* Revised Proposal, 78 FR 57939.

obligation by retaining an eligible vertical residual interest, an eligible horizontal residual interest, or any combination of such interests. Such commenters generally approved of the flexibility that the reproposal would provide to sponsors in structuring their risk retention. Further, one commenter expressed support for the single vertical security option, asserting that it would simplify compliance and monitoring obligations of the sponsor. One commenter, however, expressed concern that the definition of single vertical security could be read as though the security could have different percentage interests in each class and requested that the definition be amended to clarify that the specified percentages must result in the fair value of each interest in each such class being identical.

The agencies received several comments regarding the proposed method by which a sponsor may satisfy its risk retention requirement by holding an eligible horizontal residual interest. One commenter sought clarification as to whether advance rates and overcollateralization, equipment residual values, reserve accounts and third-party credit enhancement would constitute eligible horizontal residual interests. Another commenter sought clarification as to whether the eligible horizontal residual interest would be required to have the most subordinated claim to principal collections.[56] Further, one commenter expressed concern that the eligible horizontal residual interest option would create a conflict of interest between the sponsor and the holders of the other classes of securities, to the extent that the servicer would have control over decisions that could optimize the value of the interest at the expense of other tranches.

Regarding the horizontal cash reserve account, one commenter requested that the final rule permit a broader range of investments to align with market practice regarding standard investments used for funds held in collection, reserve and spread accounts. Another commenter requested that the final rule permit funds from eligible horizontal cash reserve accounts to be used to pay critical expenses, so long as such expense payments are made for specified priorities and are disclosed to investors. The commenter further proposed that no disclosure or calculations should be required for such payments that are senior to amounts owed to holders of third-party ABS interests or that are made to transaction parties unaffiliated with the securitizer.

The agencies invited comment on whether the rule should require a minimum proportion of risk retention held by a sponsor under the standard risk retention option to be composed of a vertical component or a horizontal component. Further, the agencies invited comment on whether a sponsor should be required to hold a higher percentage of risk retention if the sponsor retains only an eligible vertical interest or very little horizontal interest. The agencies did not receive any comments in favor of these options. One commenter expressed opposition to any requirement for a minimum vertical or horizontal component, claiming that such a requirement would increase compliance costs and increase the risk that sponsors would, as a result of accounting standards, have to consolidate securitization entities into their financial statements. In addition, two commenters expressed opposition to any higher risk retention requirement for sponsors retaining only a vertical interest.

Several commenters expressed opinions on the effect that the proposed standard risk retention option would have on decisions by sponsors regarding whether they are obligated by accounting standards to consolidate a securitization vehicle into their financial statements. Two commenters asserted that, because of the flexibility of the proposed standard risk retention option, in and of itself, the option would not cause a sponsor to have to consolidate its securitization vehicles. One of these commenters observed that case-by-case analyses would be required and that the likelihood of consolidation would increase as a sponsor retains a greater portion of its required interest as a horizontal interest. Another commenter asserted that, if potential investors require the sponsor to hold a horizontal rather than a vertical interest, or a combination, the consolidation risk will increase. This same commenter stated that forthcoming updated guidance from the Financial Accounting Standards Board may modify the way sponsors analyze their consolidation requirements. One commenter asserted that consolidation concerns may cause broker-dealers to limit their secondary market support, with respect to certain affiliate transactions, for the duration of the risk retention period and that such decisions may have an effect on secondary market liquidity. As a way of reducing consolidation risk, one commenter stated that securitization agreements should be required to give securitization trusts the right to claim 5 percent of losses from securitizers as they occur. Such losses, the commenter asserted, should be held as contingent liabilities on securitizers' balance sheets, against which reserves would need to be held.

The agencies have carefully considered comments on the reproposed structure of the standard risk retention option and, for the reasons discussed below and in the reproposal, have decided to adopt the approach as set forth in the revised proposal with some modifications. However, in the final rule the agencies are adopting several changes to the manner in which risk retention must be measured and are eliminating the restrictions on cash flow to the eligible horizontal residual interest. These changes are discussed in Part III.B.1 of this Supplementary Information.

Consistent with the reproposal, the final rule allows a sponsor to satisfy its risk retention obligation by retaining an eligible vertical interest, an eligible horizontal residual interest, or any combination thereof, as long as the percentage of the eligible vertical interest claimed as retention under the rule, when added to the percentage of the fair value of the eligible horizontal residual interest claimed as retention for purposes of the rule equals no less than five. The final rule does not mandate a minimum or specific percentage of horizontal or vertical interest that sponsors must hold when they choose to satisfy their risk retention obligation by holding a combination of vertical and horizontal interests, nor does the final rule require sponsors to hold a higher percentage of risk retention if the sponsor retains only an eligible vertical interest. The agencies added language to the final rule clarifying that the requisite percentage of eligible vertical interest, eligible horizontal residual interest, or combination thereof retained by the sponsor must be determined as of the closing date of the securitization transaction.[57]

[56] In response to a similar comment, the agencies confirm that a structure under which the interest is at the bottom of the priority of payments provisions, or last in line for payment, would satisfy this requirement whether or not the interest is ''legally'' subordinated.

[57] For example, a sponsor electing to hold risk retention in the form of a combined horizontal and vertical interest could determine the minimum amount required to be retained pursuant to the rule by determining the percentage of fair value represented by the sponsor's eligible horizontal residual interest, and then supplementing that amount with a vertical interest of a sufficient percentage so that the sum of the two percentage numbers equals five. To illustrate: If a sponsor holds an eligible horizontal residual interest with a fair value of 3.25 percent of the fair value of all the ABS interests in the issuing entity, the sponsor must also hold (at a minimum) a vertical interest equal to 1.75 percent of each class of ABS interests in the issuing entity. Alternatively, the sponsor may retain a single vertical security representing 1.75

The final rule allows a sponsor to satisfy its risk retention obligation under the vertical option by retaining a portion of each class of the ABS interests issued in the transaction or a single vertical security which represents an interest in each class of the ABS interests issued in the securitization. The rule specifies the minimum retention to be held by a sponsor. As such, the fact that provisions such as the definition of eligible vertical interest and single vertical security require the sponsor to hold the same proportion of or interest in each class of ABS interests does not preclude the sponsor from holding different proportions of or in each class. However, it does preclude the sponsor from claiming risk retention credit under the rule for any proportional interest in a class that is not the same across all classes. For example, a sponsor which holds a vertical interest of 5 percent of the most junior class and 3 percent of all other classes issued by the entity can only claim credit for a 3 percent vertical interest.

A sponsor choosing to satisfy its retention obligation solely through the retention of an interest in each class of ABS interest issued will be required to retain at least 5 percent of each class of ABS interests issued as part of the securitization transaction. A sponsor using this approach will be required to retain at least 5 percent of each class of ABS interests issued in the securitization transaction regardless of the nature of the class of ABS interests (*e.g.,* senior or subordinated) and regardless of whether the class of interests has a face or par value, was issued in certificated form, or was sold to unaffiliated investors. For example, if four classes of ABS interests are issued by an issuing entity as part of a securitization—a senior-rated class, a subordinated class, an interest-only class, and a residual interest—a sponsor using this approach with respect to the transaction will have to retain at least 5 percent of each such class or interest. If a class of interests has no face value, the sponsor will have to hold an interest in 5 percent of the cash flows paid on that class.

If a sponsor opts to satisfy its risk retention requirement solely by retaining a single vertical security, that ABS interest must entitle the holder to 5 percent of the cash flows paid on each class of ABS interests in the issuing entity (other than such single vertical security). This will provide sponsors an option that is simpler than carrying multiple securities representing a percentage share of every series, tranche, and class issued by the issuing entity, each of which might need to be valued by the sponsor on its financial statements every financial reporting period. The single vertical security option will provide the sponsor with the same principal and interest payments (and losses) as a 5 percent ownership of each series, class, or tranche of the securitization, in the form of one security to be held on the sponsor's books.

Also consistent with the revised proposal, the final rule allows a sponsor to satisfy its risk retention obligation exclusively through the horizontal option by retaining a first loss eligible horizontal residual interest in the issuing entity in an amount equal to no less than 5 percent of the fair value of all ABS interests in the issuing entity that are issued as part of the securitization transaction. The eligible horizontal residual interest may consist of either a single class or multiple classes in the issuing entity, provided that each interest qualifies, individually or in the aggregate, as an eligible horizontal residual interest.[58] In the case of multiple classes, this requirement will mean that the classes must be in consecutive order based on subordination level. For example, if there are three levels of subordinated classes and the two most subordinated classes have a combined fair value equal to 5 percent of all ABS interests, the sponsor will be required to retain these two most subordinated classes if it is going to satisfy its risk retention obligation by holding only eligible horizontal residual interests.

In lieu of holding all or part of its risk retention in the form of an eligible horizontal residual interest, the final rule will allow a sponsor to cause to be established and funded, in cash, an eligible horizontal cash reserve account, at closing, in an amount equal to the same dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable) as would be required if the sponsor held an eligible horizontal residual interest. As described in the reproposal, the eligible horizontal cash reserve account will have to be held by a trustee (or person performing functions similar to a trustee) for the benefit of the issuing entity. Consistent with the reproposal, the final rule includes several important restrictions and limitations on the eligible horizontal cash reserve account to ensure that a sponsor that establishes an eligible horizontal cash reserve account will be exposed to the same amount and type of credit risk on the securitized assets as would be the case if the sponsor held an eligible horizontal residual interest. The intention of these restrictions is to ensure amounts in the account would be available to absorb losses to the same extent as an eligible horizontal residual interest. Therefore, investments of funds in the account and uses of the account are limited. The agencies are not following commenters' suggestion to broaden the range of permissible investments of funds in the horizontal cash reserve account because that could undermine the capacity of the account to absorb losses as they occur to the same extent as an eligible horizontal residual interest. Any use of funds other than loss coverage could result in fewer funds to absorb losses later. The types of permissible investments likewise are restricted to cash and cash equivalents in order to ensure that the account will not incur investment losses and reduce the capacity of the account to absorb losses of the securitization transaction. The agencies view ''cash equivalents'' to mean high-quality, highly-liquid short-term investments the maturity of which corresponds to the securitization's expected maturity or potential need for funds and that are denominated in a currency that corresponds to either the securitized assets or the ABS interests. Depending on the specific funding needs of a particular securitization, ''cash equivalents'' might include deposits insured by the FDIC, certificates of deposit issued by a regulated U.S. financial institution, obligations backed by the full faith and credit of the United States, investments in registered money market funds, and commercial paper. For securitization transactions whose securitized assets or ABS interests are denominated in a foreign currency, cash equivalents would include cash equivalents denominated in the foreign currency. The agencies believe that the permitted investment options provide sufficient flexibility to sponsors that choose to create an eligible horizontal cash reserve account, while ensuring that such sponsors will be exposed to the same amount and type of credit risk as would be the case if the sponsor held an eligible horizontal residual interest.

In response to commenter concerns, the agencies believe that it would not violate the requirements of the eligible horizontal cash reserve account if as a result of a shortfall in the available cash

percent of the cash flows paid on each class of ABS interests in the issuing entity (other than the single vertical security itself). The rule does not prohibit the sponsor from retaining additional amounts of horizontal interests, vertical interests, or both.

[58] *See* section 2 of the final rule (definition of ''eligible horizontal residual interest'').

flow, critical expenses of the trust unrelated to credit risk, such as litigation expenses or trustee or servicer expenses, are paid from an eligible horizontal cash reserve account, so long as such payments, in the absence of available funds in the eligible horizontal cash reserve account, would be paid prior to any payments to holders of ABS interests and such payments are made to parties that are not affiliated with the sponsor.

The agencies believe the standard risk retention option, as adopted, provides sponsors with flexibility in choosing how to structure their retention of credit risk in a manner that is compatible with current practices in the securitization markets. For example, in securitization transactions where the sponsor would typically retain less than 5 percent of an eligible horizontal residual interest, the standard risk retention option will permit the sponsor to hold the balance of the risk retention as a vertical interest. Each sponsor will have to separately analyze whether the particular option the sponsor selects under the rule requires the sponsor to consolidate the assets and liabilities of a securitization vehicle onto its own balance sheet for accounting purposes. The rule itself does not provide guidance on performing the consolidation analysis, either in support of deconsolidation or in requirement of consolidation.

b. Risk Retention Measurement and Disclosures

As explained in the revised proposal, to provide greater clarity for the measurement of risk retention and to help prevent sponsors from structuring around their risk retention requirement by negating or reducing the economic exposure they are required to maintain, the agencies proposed to require sponsors to measure their risk retention requirement using fair valuation methodologies acceptable under GAAP.[59]

Several commenters supported the proposed requirement that sponsors measure their risk retention requirement using fair value. These commenters expressed the view that the use of fair value would be a more prudent approach than using face value and would be consistent with market practice. Other commenters, however, expressed general concern with the proposed method by which sponsors would be required to measure their risk retention. One commenter asserted that using fair value instead of face value would require sponsors to hold higher risk retention levels and attract additional investor capital, leading to higher borrowing costs. Two commenters explained that many sponsors who consolidate their issuing entities or keep their securitizations on their balance sheets do not currently utilize fair value calculations, and that requiring such sponsors to measure their risk retention with fair value would create significant burden and expense.

Commenters expressed several specific accounting concerns regarding the use of fair value to measure risk retention. Two commenters asserted that calculation of fair value under GAAP is not designed to provide a definitive value, but a range of values. In this regard, they expressed concerns about how the requirements could be met if a sponsor calculates multiple possible fair values. One commenter asserted that requiring sponsors to determine fair value in accordance with GAAP would be burdensome for securitization transactions where the sponsor (or other retaining entity) is established outside the United States, giving rise to additional work and costs. For such transactions, the commenter urged the agencies to allow sponsors to measure fair value using local (non-U.S.) GAAP or International Financial Reporting Standards (IFRS). One commenter asserted that GAAP does not prescribe use of a single valuation technique, but allows entities to use various techniques, including market, income and cost approaches. The commenter stated, however, that the reproposal implied that sponsors would be limited to specific valuation techniques and requested that the final rule clarify that sponsors are not so restricted. The commenter also asserted that the reproposal equated intrinsic value with fair value, which are distinct standards of value. In this regard, the commenter stated that reference to intrinsic value should either be excluded from the final rule or the agencies should clarify that intrinsic and fair value are two separate concepts.

The agencies invited comment in the reproposal on whether accountants would be asked to perform agreed upon procedures reports related to measurement of the fair value of sponsors' retained ABS interests. One commenter responded that such requests would be unlikely and requested that the agencies not mandate agreed upon procedures in the final rule.

One commenter stated that sponsors should be permitted to measure their risk retention requirement by using either fair value or securitization value (the value specified in the operative documents for the securitization transaction, subject to certain limitations) methodology. The commenter stated that securitization value is familiar to sponsors and investors, and permitting its use would accommodate a range of current industry practices. The commenter also stated that securitization value would be easier to compute than fair value.

One commenter asserted that any required risk retention amount for ABCP conduits should be calculated by reference to the principal balance, and not the fair value, of the ABS interests and asserted that using fair value will be difficult, expensive and unnecessary, especially given the revolving nature of the asset pool. Commenters also requested clarification as to whether, when they are calculating the fair value with respect to revolving pool of assets, they can make static pool assumptions.

Having considered the comments described above, the agencies are adopting a fair value framework substantially similar to the reproposal for calculating eligible horizontal residual interests in the final rule. As discussed in the reproposal, this measurement uses methods consistent with valuation methodologies familiar to market participants and provides a consistent framework for calculating residual risk retention across different securitization transactions. It also takes into account various economic factors that may affect the securitization transaction, which should aid investors in assessing the degree to which a sponsor is exposed to the risk of the securitized assets. As discussed below, in response to commenters the agencies are not adopting the proposed fair value measurement requirement for eligible vertical interests because such measurement is not necessary to ensure that the sponsor has retained 5 percent of the credit risk of the ABS interests issued.

Consistent with the reproposal, the agencies are not modifying the final rule to allow for calculation of fair value using the fair value measurement framework under local GAAP or IFRS for securitization transactions where the sponsor is established outside the United States. The agencies believe that, as of the time the final rule is adopted, these alternative valuation frameworks and GAAP have common requirements for measuring fair value, which should minimize the burden to sponsors established outside the United States of measuring fair value using the GAAP framework. The agencies believe that

[59] *Cf.* Financial Accounting Standards Board, Accounting Standards Codification Topic 820—Fair Value Measurement.

the benefits of being able to easily compare the fair value of risk retention in two separate issuances of ABS interests regardless of where the sponsors are established outweigh any minimal burden imposed by the requirement to use GAAP fair value.

In response to commenters' concerns about the burden of repeatedly calculating fair value for a constantly changing pool of securitized assets, the agencies believe that no change to the reproposed rule is required. Under the final rule, only those securitization transactions in which the issuing entity issues ABS interests more than once need to calculate the fair value of the eligible horizontal residual interest multiple times. The final rule provides specific risk retention options for most sponsors of securitizations that issue multiple series of ABS interests, including revolving pool securitizations, tender option bond programs and ABCP conduits. The agencies also note that those securitization structures which issue ABS interests on a frequent basis, primarily ABCP conduits and tender option bond programs, typically issue short-term securities for which the fair value calculation should be less complex. The agencies are clarifying that, to the extent that a sponsor uses a valuation methodology that calculates fair value based on the pool of securitized assets as of a certain date, the sponsor of a securitization of a revolving or dynamic pool of securitized assets would be able to calculate the fair value of the ABS interests using data with respect to the securitized assets as of a cut-off date or similar date, as described below, which the agencies believe should alleviate some of the concerns expressed by commenters about the burden of repeatedly calculating the fair value of the ABS interests issued. The agencies believe that this approach appropriately balances commenters' concerns with the agencies' policy goals of providing appropriate transparency into a sponsor's calculation of the fair value of ABS interests under the final rule.

Additionally, the agencies have concerns that the alternative suggested by commenters of calculating fair value no more than once per month would create unintended consequences. For instance, the calculation of fair value of ABS interests up to a month before the issuance of those ABS interests or up to a month after the issuance of those ABS interests could result in disclosure to investors based on unreliable assumptions about pricing and the expected volume of ABS interests to be issued and possibly the issuance of ABS interests in violation of the sponsor's risk retention requirements.

Under the final rule, to the extent a sponsor uses a valuation methodology that calculates fair value based on the pool of securitized assets as of a certain date, a sponsor would be permitted to use a cut-off date for establishing the composition and characteristics of the pool of securitized assets collateralizing the asset-backed securities (or similar date) that is not more than 60 days prior to the date of first use of the fair value calculation with investors, except in the case of a securitization transaction that makes distributions to investors on a quarterly or less frequent basis, in which case the sponsor may use a cut-off date or similar date not more than 135 days prior to the date of first use of the fair value calculation with investors.[60] The final rule requires that disclosures to investors be based on information about the asset pool (such as the characteristics of and assumptions regarding the pool that will be used to determine fair value) as of the cut-off date or similar date specified by the sponsor. The actual balance of the securitized assets (and the calculation of fair value) may include anticipated additions to and removals of assets that the sponsor will make between the cut-off date or similar date and the closing date. For purposes of the fair value calculation, the ABS interests must include all ABS interests issued prior to, and expected to be issued in, the pending offering of ABS interests.[61] The agencies believe this will accommodate the reporting described by commenters and the evaluation of pool assets suggested by commenters with respect to fair value calculations. The agencies recognize that not all securitization transactions update information about securitized assets on a monthly basis. The final rule permits sponsors to rely on information about the securitized assets based on a date not more than 135 days prior to the date of first use with investors for subsequent issuances of ABS interests by the same issuing entity with the same sponsor for which the securitization transaction distributes amounts to investors on a quarterly or less frequent basis.[62]

As discussed in the reproposal, fair value is a measurement framework that requires an extensive use of judgment for certain types of financial instruments, for which significant unobservable inputs are necessary to determine their fair value. To provide transparency to investors, regulators and others on how the sponsor calculates fair value in order to determine its eligible horizontal residual interest, and to ensure that this calculation adequately reflects the amount of a sponsor's economic ''skin in the game,'' the agencies proposed to require disclosure of the sponsor's fair value methodology and all significant inputs used to measure its eligible horizontal residual interest. Under the reproposal, sponsors that elected to utilize the horizontal risk retention option would have been required to disclose the reference data set or other historical information used to develop the key inputs and assumptions intended to meaningfully inform third parties of the reasonableness of the key cash flow assumptions underlying the measure of fair value. Such key assumptions could include default, prepayment, and recovery. As discussed in the reproposal, the agencies believed that these valuation inputs would help investors assess whether the fair value measure used by the sponsor to determine the amount of its risk retention is comparable to investors' expectations.

Specifically, with respect to eligible horizontal residual interests, the reproposal would have required that sponsors provide (or cause to be provided) to potential investors a reasonable time prior to the sale of ABS interests in the issuing entity and, upon request, to the Commission and its appropriate Federal banking agency (if any) disclosure of:

- The fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that would be retained (or was retained) by the sponsor at closing, and the fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of

[60] The agencies expect that a sponsor will include disclosure about the cut-off date as an aspect of the fair valuation methodology it used.

[61] The sponsor may include adjustments to the balance of ABS interests that are expected to occur in the ordinary course of events, such as scheduled principal reductions and planned issuances expected to occur after the pending offering of ABS interests.

[62] The 135-day period provides sponsors with approximately 45 days after the end of any quarter in which to provide the required information to investors if the issuing entity makes distributions to investors no more frequently than quarterly. This period parallels timeframes for prospectus and static pool information under Regulation AB. *See* Items 1104 and 1105 of Regulation AB.

the eligible horizontal residual interest required to be retained by the sponsor in connection with the securitization transaction;

- A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor;
- A description of the methodology used to calculate the fair value of all classes of ABS interests;
- The key inputs and assumptions used in measuring the total fair value of all classes of ABS interests and the fair value of the eligible horizontal residual interest retained by the sponsor (including the range of information considered in arriving at such key inputs and assumptions and an indication of the weight ascribed thereto) and the sponsor's technique(s) to derive the key inputs; and
- The historical data that would enable investors and other stakeholders to assess the reasonableness of the key cash flow assumptions underlying the fair value of the eligible horizontal residual interest. Examples of key cash flow assumptions may include default, prepayment, and recovery.

The agencies received significant comment on the proposed disclosure requirements with respect to the eligible horizontal residual interest, particularly regarding the proposed timing of disclosures and fair value calculations. Commenters expressed a number of concerns regarding the pre-sale disclosure requirement. Several commenters stated that there is an inherent conflict between the proposed requirement that fair value disclosures be made a reasonable time prior to the sale of ABS interests and the requirement that fair value be determined as of the day on which the price of the ABS interests to be sold to third parties is determined. Further, several commenters asserted that the most objective and accurate way to calculate fair value is to base the valuation on an observable market price, but this option is unavailable to sponsors in advance of pricing. In order to comply with the pre-sale disclosure requirement, they contended that sponsors would be required to make material assumptions, based on less reliable secondary sources, regarding interest, default, recovery and prepayment rates, as well as timing of reinvestments for revolving pools. Doing so, they asserted, would often result in differences between the pre-sale and final fair value and would confuse investors.

One commenter raised a concern about the proposed requirement that fair value be calculated as of the day on which the price of ABS interests sold to third-party investors is determined. The commenter, asserting that pricing for different classes in single-securitization transactions often occurs on different days, urged the agencies to clarify that the determination of fair value should be done for all classes of asset-backed securities at a single time after a specified percentage threshold of classes of asset-backed securities have priced.

As a proposed solution to the timing concerns summarized above, two commenters recommended that the final rule should require fair value determinations to be made after pricing but before closing of the transaction. The commenters stated that this would allow sponsors to more accurately determine fair value based on pricing of the securitization transaction. The commenters further stated that sponsors could still be required to disclose the expected form of risk retention prior to sale, but they should only be required to determine the fair value of those interests shortly after pricing.

In addition to timing concerns, many commenters expressed concerns about the proposed requirement that sponsors disclose the key inputs and assumptions used in measuring fair value and the sponsor's technique(s) used to derive the key inputs. Two commenters specifically stated that requiring such disclosures may mislead investors by making such inputs and assumptions seem authoritative. Further, several commenters asserted that the proposal would require sponsors to disclose information that is proprietary, highly confidential and commercially sensitive. Such information, they contended, could be used by third parties to the competitive disadvantage of the sponsor. One commenter raised specific concerns regarding the disclosure of reference data sets, noting that disclosure of such information could allow the reverse-engineering of proprietary models.

While two commenters expressed support for the reproposal's requirements that sponsors disclose the various components that were used to make fair value determinations, many others requested significant modifications to the disclosure requirements. Several commenters asserted that the rule should only require a simple disclosure to the effect that risk retention has been measured as required by the final rule. Several commenters stated that sponsors should only be required to make disclosures to the Commission and banking agencies, rather than to investors. Two such commenters proposed that issuers should be required to retain the documentation about assumptions and methodology used in calculating their risk retention obligations for a specified period of time and make such information available for inspection by the Commission and banking agencies, if requested. Further, one commenter proposed that sponsors should only be required to provide the agencies with a post-securitization fair value report within a reasonable time after the issue date.

Significant concern was raised regarding potential liability and litigation that commenters stated may result when fair value projections, assumptions and calculations disclosed to investors turn out to be incorrect. A few commenters expressed the view that liability risk would be particularly high from incorrect loss projections. Several commenters asserted that litigation risks may undermine the horizontal option by convincing many sponsors to rely instead on the vertical option. Another commenter asserted such concerns may convince sponsors to hold risk retention closer to the 5 percent minimum than they otherwise would because it is easier to demonstrate that a projected 5 percent risk retention would be accomplished than it would be for a larger percentage. Several commenters urged the agencies to provide a safe harbor from liability for all fair value calculations, which would protect sponsors as long as the methodology and assumptions used to make such calculations are reasonable and made in good faith.

Two commenters proposed that for simple structures, sponsors should not be required to make fair value determinations or related disclosures, nor should the cash flow restriction (as described below) apply. The commenters requested that such relief be provided to structures with the following characteristics: (1) The principal amount of the ABS interests sold to third parties is less than 95 percent of the principal amount of the securitized assets (and, in the case of pre-funded transactions, any cash held in a pre-funded account); (2) the weighted average interest rate (for leases, the implicit interest rate used to calculate the lease payments) on the securitized assets (or the discount rate in the case of a securitization value calculation) is not expected to be less than the time-weighted average interest rate on the ABS interests sold to third parties (for revolving and pre-funded transactions, this condition would be satisfied upon the completion of each addition of additional assets); (3) all of the ABS interests sold to third parties are traditional interest-bearing debt securities; and (4) the residual interest retained by the sponsor or other holder of a retained interest otherwise meets the requirements of an eligible horizontal residual interest.

The agencies have carefully considered the concerns of commenters with respect to the proposed disclosure requirements related to the fair value calculation of eligible horizontal residual interests. The agencies continue to believe that it is important to the functioning of the final rule to ensure that investors and the markets, as well as regulators, are provided with key information about the methodology and assumptions used by sponsors under the final rule to calculate the amount of their eligible horizontal residual interests using the fair value measurement framework under GAAP. As the agencies have previously observed, fair value is a measurement framework that for certain types of instruments requires an extensive use of judgment. In situations where significant unobservable inputs are used to determine fair value, disclosures of those assumptions are necessary to enable investors to effectively evaluate the fair value calculation. Therefore, the agencies are generally retaining the proposed fair value disclosure requirements with some modifications in response to commenter concerns, as further discussed below.

The agencies have considered the concerns raised by commenters about the potential conflict between pre-sale disclosure and timing of the fair value measurement. The agencies believe that it is important that investors be provided with information that would allow them to better evaluate how sponsors will measure the fair value of the eligible horizontal residual interest to be retained and that such information be provided prior to the investor's investment decision. The final rule continues to require certain fair value disclosures to be provided to investors a reasonable period of time prior to the sale of an asset-backed security. Nonetheless, the agencies recognize that any valuation information given prior to sale may often be preliminary. Therefore, the agencies have revised the final rule to address these concerns. The final rule allows sponsors, for disclosures provided prior to sale, to disclose the sponsor's determination of a range of fair values for the eligible horizontal residual interest that the sponsor expects to retain at the close of the securitization transaction. Under the final rule, a sponsor may provide a range of fair values for the eligible horizontal residual interest only if the specific prices, sizes or rates of interest of each tranche of the securitization are not available. Additionally, this range of fair values must be based on a range of bona fide estimates or specified prices, sizes, or rates of interest of each tranche of the securitization. The agencies note that in practice this will allow the sponsor to provide fair value disclosures based on the pricing guidance traditionally provided to investors prior to sale.[63] The sponsor must also disclose the method by which it determined any range of bona fide estimates or specified prices, tranche sizes or rates of interest.

The final rule also requires the sponsor to provide to investors a reasonable time after the closing of the securitization transaction the actual fair value measurement of the ABS interests and the eligible horizontal residual interest that the sponsor is required to retain, expressed as a dollar amount and percentage. This post-closing disclosure must be based on actual sale prices and finalized tranche sizes and corresponding interest rates at the closing of the securitization transaction.

The agencies continue to believe that the fair value of the eligible horizontal residual interest held by the sponsor as calculated post-closing must not be less than the amount required under the rule to be held by the sponsor. Although commenters expressed some concern about possible adjustments to the transaction occurring prior to closing that may impact the fair value of the eligible horizontal residual interest, the agencies expect that, if necessary, as part of the pricing process, the sponsor will make adjustments to tranche sizes, increase the percentage of vertical interest retained by the sponsor, or otherwise take actions to ensure that the actual fair value of the eligible horizontal residual interest held by the sponsor satisfies the sponsor's risk retention obligations.

The sponsor also must disclose at that time any material differences between the inputs and assumptions that had been disclosed by the sponsor to potential investors prior to sale (as required by the final rule) and the actual methodology, inputs, and assumptions used by the sponsor to measure fair value for purposes of the final rule. The agencies believe that this bifurcated approach to the timing of disclosures, as well as clarification that the pre-closing disclosures are based on a sponsor's range of bona fide estimates or specified prices, tranche sizes or rates of interest with relation to the fair value measurement of the ABS interests, should effectively balance the benefits investors and others receive from the disclosures against the concerns of sponsors.

The final rule generally retains the proposed requirement that the sponsor disclose a description of the methodology it uses to measure the fair value of the ABS interests and its eligible horizontal residual interest. For example, under the final rule sponsors are required to disclose the valuation methodology the sponsor used to determine fair value, such as discounted cash flow analysis, comparable market data, vendor pricing, or internal-model based analysis.

As discussed above, a number of commenters expressed concern about heightened legal risk and other risks due to the proposed requirement to disclose quantitative information about key inputs and assumptions, and various commenters requested that the agencies not require these disclosures to be provided to investors. The agencies continue to believe that disclosure of descriptive information with respect to key inputs and assumptions used in fair value measurement is important for helping investors to assess whether the fair value measure used by the sponsor to determine its eligible horizontal residual interest is comparable to market expectations. However, in response to commenter concerns, the agencies are modifying these requirements to take into account the preliminary and estimated nature of pricing information that may need to be used to calculate fair value prior to the sale of an asset-backed security.

The agencies believe that the disclosure required by the accounting standards that gives investors and others an understanding of how companies measure fair value is also pertinent to investors' and regulators' understanding how sponsors calculate the fair value of their eligible horizontal residual interests under the rule. Therefore, the final rule requires that the sponsor disclose, at a minimum, a description of all the inputs and assumptions it uses to calculate the fair value of the ABS interests and its eligible horizontal residual interest, including, as applicable and relevant to the calculation, disclosures on discount rates, loss given default (recovery rates), prepayment rates, default rates, the lag time between default and recovery, and

[63] The agencies expect that the range of bona fide estimates or specified prices, tranche sizes or rates of interest should be reasonably narrow, reflecting then current market conditions and the relationship between the sponsor's range of bona fide estimates or specified prices, tranche sizes or rates of interest and the historical data or other information used to derive the range of bona fide estimates or specified prices, tranche sizes or rates of interest. The agencies also expect that in most instances the range of assumed sale prices and tranche sizes will correspond closely to any pricing guidance provided to potential purchasers prior to sale.

the basis of forward interest rates used. The agencies have not prescribed the exact format of the description of key inputs and assumptions that sponsors are required to provide under the final rule. The agencies expect that the format of the required description will be tailored to the key inputs and assumptions and the reference data sets or other historical information underlying those key inputs and assumptions being described. The agencies believe that the descriptions may be disclosed in quantitative or narrative form or in a graphical or tabular format, as appropriate.

The sponsor is required to provide descriptions of all inputs and assumptions that either could have a material impact on the fair value calculation or would be material to a prospective investor's ability to evaluate the sponsor's fair value calculations. The required description of the material terms of the eligible horizontal residual interest to be retained by the sponsor should include a description of the rate of interest and other payment terms, including contractually pre-determined events that would reasonably be likely to result in a materially disproportionate payment of principal to the holder of the residual interest, as well as any reductions in overcollateralization. To the extent the required disclosure includes a description of a curve or curves in connection with the sponsor's fair value calculations, the sponsor must disclose a description of the methodology that was used to derive each curve and a description of any aspects or features of each curve that could materially impact the fair value calculation or the ability of a prospective investor to evaluate the sponsor's fair value calculation. The agencies expect that a description of the material aspects of a curve would include any aspects of the curve that could be reasonably expected to have a material impact on the timing and amounts of distributions expected to be paid to the holder of the eligible horizontal residual interest (or released from the eligible horizontal cash reserve account).

For example, if the sponsor uses curves with respect to certain key inputs and assumptions in the fair value calculations, the agencies expect that the description of those key inputs and assumptions would not assume straight lines (*e.g.,* zero-loss assumptions). As a further example, if the sponsor uses a prepayment curve to calculate the fair value of the ABS interests and its eligible horizontal residual interest for a residential mortgage securitization transaction, the disclosure might indicate that estimated annual prepayments are expected to range from X percent to Y percent, notably increasing after 36 months of amortization and peaking after 84 months of amortization. Furthermore, to the extent the inputs and assumptions are observable and based on market prices or other public information, the sponsor should disclose those inputs and assumptions or their source in order to fulfill its requirement under the final rule.

The post-closing fair value disclosure, which is required a reasonable time after the closing, obligates the sponsor to disclose any material differences between the range of bona fide estimates or specified prices, tranche sizes or rates of interests disclosed previously, as the case may be, and the actual prices, tranche sizes or rates of interest used by the sponsor in its calculation of the fair value under the rule for the ABS interests sold at closing. This permits sponsors to use the actual pricing of the ABS interests as the basis for their final disclosure requirement, which addresses certain of the concerns raised by commenters discussed above.

The agencies believe that the revisions made to the rule appropriately balance the agencies' concerns that fair value disclosure requirements adequately allow an investor to analyze the amount of a sponsor's economic ''skin in the game'' with commenters' concerns about the level of detail required by the fair value disclosure requirements.

The agencies observe that financial companies commonly provide company or portfolio-level disclosure in their financial statements about estimated ranges (and weighted averages) for certain inputs, such as interest rates and prepayment rates. Furthermore, sponsors of recent publicly-offered securitization transactions have disclosed modeling assumptions for prepayment rates based on the characteristics of securitized loans. The agencies believe that the disclosures required under the final rule are similar in nature, albeit more detailed, than these public disclosures already being made for financial reporting and similar purposes. The agencies understand that some types of inputs and assumptions have generally not been publicly disclosed, and that most sponsors have disclosed certain inputs at the balance sheet or portfolio level for different types of assets, with varying degrees of granularity that have generally not included disclosures for individual transactions. However, the agencies observe that some of the concerns that commenters have raised about potential liability for disclosure of inputs and assumptions at the transactional level could also be pertinent at the portfolio level if the inputs and assumptions were later proved incorrect. Furthermore, the agencies believe that the modifications to the disclosure requirement that permit the sponsor to disclose a range of fair values based on assumptions about pricing, appropriately balances commenters' concerns with the agencies' policy goals of providing appropriate transparency into a sponsor's calculation of the fair value of ABS interests and eligible horizontal residual interest under the final rule. In response to commenters' concerns about the proposed requirement to disclose the reference data set or other historical information used to develop the key inputs and assumptions used in the fair value measurement of the ABS interests, the agencies have modified significantly that requirement in the final rule. The agencies understand there may be significant legal concerns with disclosing this data, including the proprietary nature and value of the data and contractual restrictions with respect to disclosure when the data is provided by third parties. The agencies believe that investors may in many cases independently obtain representative data sets for evaluating the ABS interests offered for purposes of evaluating the sponsor's fair value measurement, including the disclosures on the sponsor's inputs and assumptions required by the final rule and described above.

The final rule requires that the sponsor provide a summary description of the reference data set or other historical information used to develop the key inputs and assumptions used in the sponsor's calculation of the fair value of the ABS interests, including loss given default and default rates. This disclosure should meaningfully inform third parties of the reasonableness of the key cash flow assumptions underlying the sponsor's measurement of fair value. Relevant information may include the number of data points, the time period covered by the data set, the identity of the party that collected the data, the purpose for which the data was collected and, if the data is publicly available, how the data may be accessed. The agencies believe that this represents an appropriate balance between the information required for an investor to evaluate the sponsor's fair value disclosure and commenter's concerns about the disclosure of the reference data set or other historical information. In response to commenters' requests that the agencies provide a safe harbor from liability for all fair value calculations, as long as the methodology and assumptions used to make such calculations are reasonable and made in good faith, the agencies do not believe a new safe harbor is necessary. The final rule does not alter any existing antifraud liability provisions of the Federal securities laws. Furthermore, sponsors may provide additional disclosure to take advantage of the existing safe harbor for forward-looking statements under section 27A of the Securities Act,[64] if applicable, and the ''bespeaks caution'' defense developed through case law.[65]

To this end, the sponsor should consider carefully the disclosure requirements under the Federal securities laws. The sponsor should be cognizant of surrounding disclosure and should determine if the disclosure of such fair value methodology and related assumptions requires additional statements or information.[66]

To the extent the assumptions made in connection with the methodology used to measure fair value are not entirely consistent with other disclosure regarding the securitization structure and the transaction parties, the sponsor may need to include additional statements or information that reduce the potential confusion among investors. Alternatively, to the extent allowed under the fair value measurement framework under GAAP, a sponsor could use a methodology and assumptions that are more consistent with the sponsor's other disclosures regarding the securitization structure and the transaction parties.

The agencies did not provide an option for ''simple structures'' based on the face value of the securitized assets and the face value of the ABS interests. The agencies believe that the face value of both the securitized assets and the face value of the ABS interests do not necessarily reflect the actual value of the securitized assets or the ABS interests, respectively. For certain assets such as leases, the ''face value'' of the underlying assets is a number calculated solely for purposes of the securitization transaction and the calculation involves many of the inputs and assumptions discussed above in relation to fair value. The face value of certain ABS interests such as the CMBS B-piece does not reflect the substantial discount to face value at which such ABS interests are often sold to investors. As the face value of both the securitized assets and the face value of the ABS interests can materially differ from their relative value and cost to the sponsor, the agencies do not believe that a credit risk retention option based solely on a comparison of the face value of the underlying assets and the face value of the ABS interests would provide meaningful risk retention consistent with the goals and intent of section 15G.[67]

In addition to the measurement and disclosure requirements applicable to eligible horizontal residual interests, the reproposal would have required sponsors holding their risk retention through eligible vertical interests to measure such interests using fair value and to comply with certain disclosure requirements. With respect to the vertical option, the reproposal would have required that sponsors provide (or cause to be provided) to potential investors a reasonable time prior to the sale of ABS interests in the issuing entity and, upon request, to the Commission and its appropriate Federal banking agency (if any) disclosure of:

- Whether any retained vertical interest is retained as a single vertical security or as separate proportional interests in each ABS interest;
- Each class of ABS interests in the issuing entity underlying the single vertical security at the closing of the securitization transaction and the percentage of each class of ABS interests in the issuing entity that the sponsor would have been required to retain if the sponsor held the eligible vertical interest as a separate proportional interest in each class of ABS interest in the issuing entity;
- The fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of any single vertical security or separate proportional interests that would be (or was retained) by the sponsor at closing, and the fair value (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the single vertical security or separate proportional interests required to be retained by the sponsor in connection with the securitization transaction;
- A description of the methodology used to calculate the fair value of all classes of ABS interests; and
- The key inputs and assumptions used in measuring the total fair value of all classes of ABS interests (including the range of information considered in arriving at such key inputs and assumptions and an indication of the weight ascribed thereto) and the sponsor's technique(s) to derive the key inputs.

Several commenters asserted that the final rule should not require sponsors to measure and disclose the fair value of eligible vertical interests, so long as the underlying ABS interests have either a principal or notional balance. The commenters stated that a 5 percent interest in the cash flow of each class would always be equivalent to 5 percent of each class. In this regard, the commenters stated that requiring fair value measurement and disclosures for the vertical option would be unnecessary for ensuring compliance with the rule.

The agencies agree that calculation of fair value for eligible vertical interests is unnecessary. The agencies note that only those sponsors that rely exclusively on an eligible vertical interest to meet their risk retention requirements would not have to calculate the fair value of the ABS interests and make the related disclosures. A sponsor that wishes to receive credit for any residual interest that meets the requirements of an eligible horizontal residual interest (other than any portion of the residual retained as part of an eligible vertical interest) would be required to calculate the fair value of the ABS interests and make the related disclosures.

c. Restriction on Projected Cash Flows to Eligible Horizontal Residual Interest

The reproposal would have placed limits on projected payments to holders of the eligible horizontal residual interest. Specifically, the reproposal included a restriction on projected cash flows to be paid to the eligible horizontal residual interest that would have limited how quickly the sponsor would have been able to recover the fair value amount of the eligible horizontal residual interest in the form of cash payments from the securitization (or, if an eligible horizontal cash reserve account were established, released to the sponsor or other holder of such account). The sponsor would have been

[64] *See* 15 U.S.C. 77z–2.

[65] *See, e.g., Polin* v. *Conductron Corp.,* 552 F.2d 797, 806 n.28 (8th Cir. 1977); *Luce* v. *Edelstein,* 802 F.2d 49, 56 (2d Cir. 1986); *In re Donald J. Trump Casino Sec. Litig.,* 7 F.3d 357, 364 (3d Cir. 1993); *P. Stolz Family P'ship L.P.* v. *Daum,* 355 F.3d 92, 96–97 (2d Cir. 2004); and *Iowa Pub. Emps.' Ret. Sys.* v. *MF Global Ltd.,* 620 F.3d 137, 141–142 (2d Cir. 2010).

[66] *See, e.g.,* Rule 408 under the Securities Act; Sections 11, 12(a)(2) and 17(a) of the Securities Act; Section 10(b) of the Exchange Act; Rule 10b–5 under the Exchange Act; and Rule 12b–20 under the Exchange Act.

[67] *See supra* note 52.

prohibited from structuring a deal where it was projected to receive such amounts at a faster rate than the rate at which principal was projected to be paid to investors on all ABS interests in the securitization. The restriction was designed with an intention of enabling sponsors to satisfy their risk retention requirements with the retention of an eligible horizontal residual interest in a variety of ABS structures, including those structures that do not distinguish between principal and interest payments and between principal losses and other losses. The restriction was discussed in detail in the reproposal.[68]

The agencies invited comment in the reproposal on whether an alternative provision should be adopted relating to the amount of principal payments that could be received by the eligible horizontal residual interest. Under this alternative, on any payment date, in accordance with the transaction's governing documents, the cumulative amount paid to an eligible horizontal residual interest would not be permitted to exceed a proportionate share of the cumulative amount paid to all holders of ABS interests in the transaction. The proportionate share would equal the percentage, as measured on the date of issuance, of the fair value of all of the ABS interests issued in the transaction that is represented by the fair value of the eligible horizontal residual interest.[69]

The agencies received a significant number of comments regarding the proposed cash flow restrictions as well as the alternative approach on which they invited comment. Several commenters requested that the proposed cash flow restriction to the eligible horizontal residual interest and related certification be eliminated, either entirely or for specific asset classes, while one commenter proposed that the restriction be eliminated at sunset.

Several commenters suggested that the proposed restriction on cash flow distributions would be incompatible with a variety of securitization structures, such as those organized to have increasing overcollateralization over time, large amounts of excess spread at closing, or bullet maturities. Commenters stated that the reproposal's failure to distinguish between payments of interest and principal on the eligible horizontal residual interest would be particularly problematic for many transactions. Such structures highlighted by commenters included CMBS, where monthly cash flow comes predominantly from interest payments for much of the life of the securitization, with the result that these existing structures would not meet the test and would not have an economically attractive eligible horizontal residual interest (or B-piece) if they did meet the test. Several commenters also stated that the proposed cash flow restriction would be problematic for CLOs and other structures that use principal proceeds to reinvest in additional assets, but continue to pay interest, for significant reinvestment periods. One such commenter suggested that the final rule should specify that the use of proceeds to acquire new assets and reinvest does not constitute a payment with respect to the eligible horizontal residual interest.

Commenters raised a number of specific concerns regarding the calculations and projections that would be required by the proposed cash flow restriction. One commenter stated that the calculations that sponsors would be required to compare in order to determine whether restrictions are required would be too different to make effective comparison possible. Several commenters asserted that the calculations, disclosures, and certifications required by the proposed cash flow restriction were incompatible with revolving structures, since the asset pools of revolving structures change over time and the time at which the amortization period will commence is not always known at the closing date. These commenters suggested an alternative certification and calculation method for revolving structures. Another commenter suggested that when the ABS interest is a variable funding note that may have periodic increases and decreases in principal amount, the date of any increase or decrease should be treated as a new issue date for purposes of calculating the proposed cash flow restriction.

A few commenters asserted that the proposed cash flow restriction would significantly change the nature of the residual structure, since, for many structures, it would eliminate or severely restrict the payment of interest or yield to holders of the eligible horizontal residual interest. One commenter stated that if the holder of an eligible horizontal residual interest is not able to receive a return commensurate with the risk of the interest, the fair value of the interest will decrease, requiring that it represent a significantly greater portion of the capital structure of the securitization in order to reach 5 percent of the fair value of all ABS interests issued. Another commenter asserted that the proposed cash flow restriction would discourage sponsors from structuring offerings of ABS interests with excess spread exceeding 5 percent of the fair value of the transaction because the restriction would effectively prevent sponsors from reducing such excess spread to 5 percent during the life of the transaction.

The certifications and disclosures to investors that would have been required by the proposed cash flow restriction were also a focus of concern for commenters. Several commenters expressed concern about potential liability that could result from the proposed requirement that sponsors certify to investors that they had performed the required calculations and to certify their expectations regarding the cash flow to the eligible horizontal residual interest as compared to more senior ABS interests. Commenters stated that sponsors could be subject to liability, if their projections and assumptions differed from actual results. One commenter specifically contended that the difficulty in accurately modeling prepayment risks heightens the risk of liability. Two commenters suggested that a safe harbor should be granted to protect sponsors from such liability risk. One such commenter requested limiting the safe harbor to sponsors who utilize reasonable methodologies in making the required calculations. A different commenter suggested that, rather than requiring the sponsor to make the certifications to investors, the sponsor should only have to maintain a record of the closing date calculations, including the methodology and material assumptions underlying them, and make those records available to the Commission and banking agencies upon request for five years. One commenter suggested that the proposed certification to investors should be replaced with a requirement that the sponsor disclose to investors, in the offering documents, that it has performed and met the cash flow restriction test.

The agencies also received comments regarding the proposed requirement that sponsors would have to disclose their past performance in respect to the cash flow calculations. One commenter raised concern that requiring such disclosures could create potential liability issues concerning false disclosures. Two commenters suggested a modification to the proposed requirement such that the sponsor would have to disclose the number of payment dates on which the actual payments made to the sponsor under the eligible horizontal residual interest exceeded the amounts projected to be paid to the sponsor on such payment

[68] Revised Proposal, 78 FR at 57938.

[69] *See* Revised Proposal, 78 FR at 57941.

dates. These commenters asserted that the focus of this disclosure should be on the cumulative amount of payments made to the holder of the eligible horizontal residual interests, rather than the cash flow projected to be paid to the sponsor on the payment dates.

Several commenters offered qualified support for the alternative proposal on which the agencies invited comment. Such support was largely based on the fact that the alternative proposal would have required the comparison of all forms of payment to both the eligible horizontal residual interest and the investor interests, while the proposed cash flow restriction would have required the comparison of all forms of payment to the eligible horizontal residual interest and only principal payments to the investor interests. Two commenters asserted that, without a detailed proposal, it is difficult to determine what type of cash flow comparisons the agencies intended to cover with the alternative proposal and that they would not support any proposal that does not allow for market rates of return to be paid to the eligible horizontal residual interest. One commenter would support the alternative proposal if it were modified to clarify that a residual interest, in order to be considered an eligible horizontal residual interest, be limited in the amount of principal repayments it may receive, such that the cumulative amount of payments applied to reduce its principal or notional balance as of any payment date is proportionate to (or less than) the cumulative amount of payments applied to reduce the principal or notional balance of all ABS interests in the transaction as of such payment date. One commenter requested a modified version of the alternative proposal that the commenter said would be more appropriate for CMBS transactions. The commenter asserted that, since CMBS bonds associated with the horizontal risk retention interest are sold at a discount, the alternative proposal should allow the percentage of cash flow paid to the horizontal risk retention holder to be based on the face value, rather than the fair value, of their purchased interest.

Commenters also offered various alternative proposals to the proposed cash flow restriction. One commenter requested that a sponsor be considered to have met its risk retention obligation if it satisfies one of the following tests on the closing date based on projections or assumptions of timely payment: (1) The projected fair value of the amount retained as of each payment date will not be less than the required 5 percent; (2) the level of overcollateralization calculated based on the amortizing balance of the ABS interests as of each payment date, is not projected to decline below 5 percent over the life of the transaction; or (3) the projected principal payments to be paid to the eligible horizontal residual interest, as of each payment date, will not exceed its pro rata share of all payments made to ABS interest holders on such payment date. One commenter suggested that the test should be limited to a projection that the retained risk will be equal to at least 5 percent of the sum of the projected aggregate fair value of all ABS interests in the issuing entity, other than the eligible horizontal residual interest, and the projected fair value of the eligible horizontal residual interest.

After careful consideration of the comments, the agencies agree that the restrictions on projected cash flow to the eligible horizontal residual interest included in the proposed rule would not operate without significant risk of unintended consequences. Furthermore, the agencies have not identified a cash flow restriction mechanism that would function effectively across asset classes without having an unduly restrictive impact on particular asset classes. While the agencies could consider different tests for different classes, the agencies believe that would lead to a more complicated rule that could be difficult to administer and that would likely engender more opportunity to undermine the impact of the final rule on the alignment of interests between the sponsor and investors. Additionally, the agencies believe that alternatives suggested by commenters that proposed to restrict cash flows based on a comparison of projections of the face value of securitized assets and the face value of outstanding ABS interests (which do not capture expected credit losses, among other things) and alternatives that focused only on repayment of principal either would be easily evaded or would not effectively further the statutory goals and directive of section 15G of the Exchange Act to limit credit risk and promote sound underwriting. Accordingly, the agencies are not including in the final rule the proposed cash flow restriction, the alternative described in the reproposal, or the alternatives suggested by commenters.

The agencies are concerned that risk retention may become less meaningful when a sponsor quickly recovers the value of risk retention through distributions. However, the agencies note that the final rule requires disclosure regarding the material terms of the risk retention interest, and the timing of cash flows and determination of fair value, which is designed to facilitate investor determination of whether the risk retention interest to be held by the sponsor remains meaningful over time. In addition, while the rule requires that the sponsor measure an eligible horizontal residual interest only as of the closing of a transaction (and, under certain circumstances, if additional ABS interests are issued thereafter), the rule also restricts the ability of a sponsor to transfer or hedge any interest in the credit risk of the securitized assets it is required to retain until the expiration of specified periods. Therefore, the rule is designed so that the sponsor remains exposed to the credit risk of securitized assets, up to the amount required to be retained. If the agencies observe that either the assumptions and methodologies used to calculate the fair value of horizontal risk retention or the structuring of securitization transactions—including structuring of payments to the residual interest—tends to undermine the ability of the risk retention to align the interests of sponsor and investors, the agencies will consider whether modifications to the rule should be made to address these issues.

2. Master Trusts: Revolving Pool Securitizations

a. Overview of the Reproposal and Public Comments

Many securitization sponsors face a mismatch between the maturities of the assets they seek to securitize and the maturities of bonds sought by investors in the market. In order to obtain best execution for a securitization of those assets—or in other cases, in order to obtain any investor interest in the market of any kind—the sponsor must use a structure that transforms the available cash flow from the assets into debt with a maturity and repayment type (amortizing or bullet) sought by investors. Furthermore, if the sponsor's business generates an ongoing stream of assets to be securitized under these circumstances, especially (but not always) if the assets are receivables generated from revolving credit lines, the sponsor faces unique challenges in structuring its securitization.

One solution to these issues, which has evolved over the last 25 years, is a type of revolving pool securitization commonly known as a ''master trust'' securitization. Master trusts generally issue multiple series of asset-backed securities over time, collateralized by a common pool of securitized assets. The transaction documentation requires the sponsor to maintain the collateral balance at an amount that is at all times sufficient to back the aggregate amount of outstanding investor ABS interests with a specified amount of collateral above that amount. The amount of outstanding investor ABS interests changes over time as new series are issued or existing series are paid down. Moreover, as each series is issued, it begins with a revolving period (typically for some number of years), during which the holders of investor ABS interests receive only interest, and cash from borrower principal repayments on the securitized assets are used to buy additional assets for the pool from the sponsor. This provides the sponsor with ongoing funding for its operations, and maintains the level of securitized assets over time. Then, at a date specified under the terms of the series, the revolving phase for the series comes to an end, and cash from borrower principal repayments on securitized assets is used to repay investors and retire that series of investor ABS interests.

Separately from the issue of credit enhancement for the investor ABS interests, which is discussed below, investors are concerned that the total amount and quality of securitized assets does not decline unacceptably during the revolving period of the series. If that were to happen, the master trust could face difficulties repaying investors months or years later when the series matures. To protect against this, the sponsor is typically required, at various intervals, to measure the amount by which the aggregate principal balance of the securitized assets exceeds the aggregate principal balance of the outstanding investor ABS interests. If this ''cushion'' of securitized assets falls below a target level, the sponsor has a specified cure period in which it may add more assets to restore the pool to its required target size.[70] Credit quality problems with the securitized assets would lead to elevated charge-offs of securitized assets, which in turn could cause the pool to fall below the target level.[71]

If the sponsor cannot restore the pool balance to its required target level within the cure period, the master trust commences an ''early amortization mode.'' Once that occurs, the sponsor may no longer use borrower payments on the securitized assets to purchase additional loans to transfer to the securitization, and interest and principal payments on the securitized assets are used to begin paying down outstanding investor ABS interests as rapidly as practicable. The consequences to the sponsor are significant, since early amortization of the master trust means the sponsor will no longer have access to securitized funding through the master trust for future securitized assets generated in connection with the sponsor's operations.

The agencies' reproposal would have recognized the ''seller's interest'' retained by a master trust sponsor as an acceptable form of risk retention to meet the sponsor's obligations under the rule. In many master trusts, the ''seller's interest'' is the amount by which the outstanding principal balance (or equivalent measurement) of the assets held by the master trust exceeds the outstanding principal balance of the outstanding ABS interests and is required by the series transaction documents to be maintained at or above a specified percentage of the aggregate outstanding investor ABS interests, measured monthly (*e.g.,* the seller's interest in the principal balance of pool collateral is required to equal at least 5 percent of the principal balance of all outstanding investor ABS interests). The seller's interest is not attached to specific pool collateral; it is an undivided interest in the entire pool akin to a participation interest, representing the sponsor's entitlement to a percentage of the total principal and interest or finance charge payments received on the pooled securitized assets for every payment period (typically monthly). Investors in the various series of ABS interests issued by the master trust have claims on the remaining principal and interest or finance charge payments, as the source of repayment for the ABS interests they purchased from the master trust. The seller's interest in these structures is generally *pari passu* with the investor ABS interests, resulting in the sponsor incurring a *pro rata* share of credit losses on securitized assets, in a percentage amount equal to the percentage amount of the seller's interest as calculated under the terms of the transaction documents.[72]

The agencies' reproposal would have treated a *pari passu* seller's interest as a separate form of risk retention. The reproposal would have allowed this option to be used only by issuing entities organized as master trusts, established to issue on multiple issuance dates one or more series of ABS interests, all of which are collateralized by a common pool of assets that will change in composition over time. The reproposal would have required distributions to the sponsor on the seller's interest to be *pari passu* with each series of investor ABS interests, prior to an early amortization event as defined in the transaction documents. The sponsor would have been required to meet the 5 percent threshold for its seller's interest at the closing of each issuance of ABS interests by the master trust, and at each seller's interest measurement date specified in the transaction documents, but no less often than monthly. The reproposal would have required the seller's interest to be retained by the sponsor or by a wholly-owned affiliate of the sponsor.

For so-called ''legacy master trusts''—which hold revolving pools of collateral and issue a certificate that entitles the holder to distributions on that collateral to another one of the sponsor's master trusts, which in turn securitizes those distributions into investor ABS interests—the reproposal would have allowed the seller's interest with respect to the legacy trust assets to be held by the sponsor at the level of either trust, in proportion to their differing asset pools. The agencies also proposed to allow an offset against the required seller's interest, on a dollar-for-dollar basis, for so-called ''excess funding accounts.'' These accounts receive distributions that would otherwise be paid to the holder of the seller's interest if the sponsor fails to meet the minimum seller's interest requirement. In the event of an early amortization of the master trust, funds from the excess funding account would be used to make distributions to outstanding investor ABS interests, in the same manner as distributions on pool collateral during early amortization.

In the reproposal, the agencies also observed that some of the master trusts in the market are not structured to include a *pari passu* seller's interest of a sufficient size to meet the proposed rule's 5 percent trust-wide requirement. In an effort to accommodate sponsors of these trusts, the reproposal would have allowed the sponsor to reduce its 5 percent *pari passu* seller's interest requirement by whatever corresponding percentage of horizontal ABS interest the sponsor held in the structure. The reproposal would have given the sponsor credit for an eligible horizontal residual interest under section 4 for these purposes, as well as an alternative form of horizontal risk retention based

[70] Instead of adding assets, the sponsor might also avail itself of options described in the transaction documents to reduce or repay outstanding investor ABS interests.

[71] The level of securitized assets in the pool might also fall if securitized assets are repaid according to their terms and the master trust does not use the repaid principal to acquire replacement securitized assets from the sponsor.

[72] A 5 percent *pari passu* seller's interest is commonly required in credit card master trusts.

on excess spread (described below). The sponsor would have been required to determine the percentages of horizontal retention on a fair value basis, consistent with the reproposal's treatment of other subordinated forms of risk retention. Furthermore, any gap between the amount of trust-wide *pari passu* seller's interest held by the sponsor and the 5 percent minimum requirement would have been required to be offset with an equivalent fair value percentage of the permitted horizontal interests for every outstanding series issued by the master trust.

Another alternative form of horizontal risk retention that would have been recognized by the reproposal was designed to allow sponsors to receive risk retention credit for excess spread, which constitutes a significant portion of the credit enhancement in master trusts collateralized by credit card receivables. These master trusts are structured with two separate cash waterfalls, one for principal repayments collected from borrowers and one for interest and fees (finance charges) collected from borrowers. Interest and fees collected from borrowers each payment period are used to cover the master trust's expenses and to pay interest due on outstanding investor ABS interests for the period, and the remaining interest and fee collections are then made available to cover principal charge-offs on securitized assets. The sponsor is then entitled to collect whatever interest and fee collections remain. Absent application of the excess interest and fee collections to cover principal charge-offs, the principal charge-offs would result in the balance of outstanding investor ABS interests being reduced. Accordingly, the reproposal would have recognized the sponsor's interest in the residual interest and fees (excess spread) as a subordinated form of horizontal risk retention, if it was structured in the manner described in this paragraph, so long as the master trust continued to revolve, and the sponsor determined and disclosed the fair value of the residual interest and fees on the same monthly basis as its *pari passu* seller's interest.

The reproposal also included provisions clarifying that a master trust entering early amortization and winding down would not, as a result, violate the rule's requirement that the seller's interest be *pari passu.* During early amortization, distributions on this form of seller's interest typically become subordinated to investor interests, to allow for the repayment of the outstanding investor ABS interests more rapidly.

The agencies received extensive comments on the overall design and the details of the reproposal's option for master trusts. Commenters stated that the agencies needed to make numerous revisions to the mechanics of the reproposal for master trusts or the seller's interest option would not be useable by most revolving pool securitization structures in the market. Moreover, commenters stated that most revolving pool securitizations in the market would be left with no mechanism for horizontal risk retention under the rule whatsoever, because the requirements in section 4 of the reproposed rule for an eligible horizontal residual interest conflicted with key provisions of those revolving pool securitizations. Commenters pointed out that revolving pool securitization structures have evolved beyond credit cards and automobile dealer floorplan financing, to encompass numerous specialized asset classes important to the U.S. economy. Examples they cited included a wide variety of floorplan and trade receivable financing for commercial manufacturing firms, other non-revolving short-term assets such as insurance premium loans and servicer advance receivables, a broad variety of equipment leasing programs, and home equity line receivables. Commenters identified two overarching concerns with the reproposal, and also made numerous, more detailed recommendations for revisions to the mechanics of the rule.

The first area of overarching concern for commenters centered on the agencies' proposed treatment of subordinated forms of risk retention in the master trust context. In the reproposal, the agencies noted the existence of subordinated forms of seller's interests in the market. The agencies invited comment on whether subordinated seller's interests should be given risk retention credit under the rule, but also pointed out that the agencies were inclined to require it to be measured on a fair value basis, consistent with the treatment of other forms of subordinated risk retention under the reproposal. Commenters said many revolving pool securitizations in the market relied on subordinated seller's interests as the principal source of credit enhancement and, therefore, it was critical for the agencies to include it in the rule.[73] Commenters also said that monthly calculations of fair value, as suggested by the agencies in the reproposal, would be immensely burdensome. Commenters said this burden was especially unwarranted in the case of revolving pool securitizations, which do not monetize excess spread and, therefore, do not present the risks of evasion through deal structures that motivated the agencies' restrictions on other forms of horizontal risk retention. Commenters also said that the agencies' concerns about sponsor manipulation and evasion were misplaced, because revolving pool securitization sponsors rely on the funding they thereby obtain as a principal source of ongoing funding for their business operations. Commenters said this creates an alignment of interests between sponsors and investors that is the opposite of the originate-to-distribute model.[74]

The other areas of concern for commenters were differences between the reproposal's requirements for the eligible horizontal residual interest and the terms of existing revolving pool securitizations in the market. First, commenters said the cash flow recovery percentage calculations were structurally incompatible with revolving pool securitizations.[75] Second, commenters expressed heightened concerns about their potential liability for disclosing predictions and assumptions about the future performance of a revolving pool securitization, in connection with making the fair value determination

[73] One group of commenters said the typical *pari passu* seller's interest in a floorplan securitization was zero percent, and they were aware of no floorplan securitization with one higher than 2 percent. These commenters said that a subordinated seller's interest was, like a *pari passu* seller's interest, typically calculated as a set percentage of additional assets required to be held in the collateral pool, over and above an amount equal to the total amount of outstanding investor ABS interests (though this percentage is often determined on a series-by-series basis rather than a trust-wide basis). Principal and interest payments made with respect to this subordinated seller's interest are distributed to the sponsor, *after* they are first applied to cover any charge-offs of securitized assets that would otherwise reduce the principal amount of outstanding investor ABS interests. The sponsor's share of principal and interest distributions is also available to cover shortfalls in payments of principal and interest due to investors.

[74] Commenters representing automobile, equipment, and dealer floorplan manufacturers were among those advocating for a simplified risk retention alternative, without fair value requirements and cash flow restrictions, for ''simple'' securitization structures that issue only ''traditional'' interest bearing asset-backed securities with 5 to 10 percent overcollateralization on a face value basis and weighted average interest rates on the issued asset-backed securities in line with that of the securitized assets. The agencies note that the elimination of the cash flow restrictions from section 4 of the rule, accompanied by the treatment of subordinated seller's interests adopted in the final rule, should significantly address the source of commenters' concerns in this regard.

[75] The agencies note that the elimination of the cash flow restrictions from section 4 of the rule addresses commenters' concerns in this regard.

required by the rule. Third, commenters asserted that the requirement for the eligible horizontal residual interest to be the most subordinated claim to payments of both principal and interest could not be achieved when the sponsor is also entitled to collect residual interest and fees, because there are separate interest and principal waterfalls and the subordinated junior bond in the series held by the sponsor (whether or not it is certificated or rated) is usually structured to be paid interest before the allocation of interest and fee collections to cover charge-offs otherwise allocable to senior bonds (and in some cases, charge-offs allocable to the junior interests held by the sponsor as well).

Commenters said that sponsors sought the ability to continue incorporating subordinated seller's interest or residual ABS interest in excess interest and fees into their deal structures and simultaneously retain a junior bond, while still having the flexibility to choose which combination of those interests the sponsor would use to comply with the risk retention requirements. Commenters placed particular importance on retaining the flexibility to do this without being required to engage in fair value determinations for the interests the sponsor does not count for purposes of regulatory compliance.

In addition, commenters expressed concerns about paragraphs (2) and (3) of the eligible horizontal residual interest definition in connection with the series-level allocations and delinked structures used in revolving pool securitizations.

Commenters also asked the agencies to modify the rule's subordination requirements to allow a subordinated tranche held as an eligible horizontal residual interest to be repaid prior to later-maturing senior tranches, noting that, in delinked structures, a subordinated tranche which enhances one or more senior tranches may mature before the senior tranche. In these circumstances, commenters said the securitization transaction documents contain terms requiring the subordinated tranche to be replaced to the extent the remaining senior tranches still require credit enhancement under the terms of the transaction documents.

In addition to these concerns, commenters requested numerous changes they said were necessary to recognize the risk retention existing in revolving pool securitizations in the current market.

Commenters said many revolving securitization structures that are commonly referred to as ''master trusts'' do not, in fact, use issuing entities organized in the form of a trust, and their organizational documents do not necessarily state that they are established to issue multiple series. Commenters also expressed concern about whether sponsors universally hold their seller's interests in the form of an ''ABS interest'' as defined in the reproposed rule.

Commenters requested clarification as to whether the requirement that the master trust be collateralized by a common pool of securitized assets means that every series must be secured by every asset held by the issuing entity. Commenters explained that some revolving pool securitizations may use collateral groupings, and further that principal accumulation and interest reserve accounts may be held only for the benefit of an identified series. Commenters also requested clarification as to whether the common pool requirement prevents the issuing entity from holding assets that are not eligible to support issuance of additional ABS interests to investors (such as excess concentration receivables), but are nonetheless pledged as collateral to the structure, with proceeds from these ineligible assets being allocated to the sponsor, sometimes with varying extents of subordination to one or more series of outstanding investor ABS interests.

In the reproposal, the agencies invited comment on whether, if a sponsor is relying on the seller's interest as its required credit risk retention under the rule, the final rule should preclude the master trust from monetizing excess spread, in exchange for allowing the seller's interest to be calculated on the basis of the principal balance of outstanding investor ABS interests instead of the fair value of outstanding investor ABS interests. Commenters questioned the agencies' rationale for this restriction, asserting that revolving pool securitizations that generate excess spread do not monetize it through the issuance of interest-only securities or premium bonds. Commenters said revolving pool securitizations do exactly the opposite, making excess spread available to cover losses that would otherwise reduce the principal repayments to outstanding investor ABS interests.[76]

Commenters questioned why the reproposal would, as a general rule, permit a majority-owned affiliate of a securitizer to hold the securitizer's risk retention interest required by the rule, but in the case of revolving pool securitizations would only permit the seller's interest or special horizontal interest to be held by the securitizer or a wholly-owned affiliate of the securitizer.

Commenters also requested that the agencies revise the rule to permit risk retention in legacy master trusts to be held at the legacy master trust level, not only for seller's interests, as the agencies proposed, but also for horizontal forms of risk retention permitted under the rule.

Commenters requested that the agencies make changes to the details of the definition of seller's interest concerning the requirement that the sponsor's distributions on the seller's interest be *pari passu* prior to an early amortization event. Commenters pointed out that principal distributions on the seller's interest are subordinated to a series of outstanding investor ABS interests in a controlled accumulation phase or amortization, because the transaction documents typically fix the proportions for allocation of principal distributions to the series at the start of the accumulation phase or amortization period.[77]

With respect to the reproposal's requirement for master trusts to measure the seller's interest on the measurement date specified in the transaction documents, no less than monthly, commenters requested two changes. First, commenters stated that some revolving pool securitizations require measurements of the seller's interest on a more frequent basis, and that they should not be required to measure the seller's interest for regulatory compliance purposes more often than monthly (and at the closing of each issuance of ABS interests).[78] Second, commenters requested the agencies to recognize the cure period afforded them under their transaction documents. Commenters also requested changes to the specifics of the disclosure requirements with respect to the cut-off dates for disclosing the amount of seller's interest retained by the sponsor.

Commenters also requested changes to the details of the reproposed rule's

[76] Commenters also expressed concern as to how the agencies could define the difference between premium bonds and bonds that price above par due to investor enthusiasm for a particular bond.

[77] Moreover, some revolving pool securitizations allocate principal during an accumulation phase pursuant to a formula that captures all available principal collections from the assets that are not otherwise needed for other principal accumulation accounts and acquisition of new pool collateral.

[78] Commenters said that the measurement referred to by the agencies in the reproposal, for purposes of determining whether the sponsor must add more assets to the collateral pool, generally takes place monthly. However, the seller's interest is measured more frequently (as often as daily) for other purposes, such as verifying whether cash may be released to the sponsor.

treatment of excess funding accounts and the provisions on early amortization, to better reflect the way early amortization triggers are currently structured.

Commenters supported the reproposal's inclusion of residual interest and fees as a recognized form of risk retention for revolving pool securitizations. They recognized the rationale for requiring sponsors using the option to measure it on a fair value basis, but expressed concern that the burdens of performing the valuation monthly would be so substantial as to dissuade all but a few revolving pool securitizations from using the option. Commenters also requested some changes and clarifications to the mechanics of the rule language in the reproposal, to accommodate established structures being used in the market. They also requested that the agencies eliminate the requirement for separate interest and principal waterfalls.

Commenters supported the reproposal's inclusion of provisions allowing revolving pool securitizations to offset and reduce their 5 percent seller's interest with corresponding amounts of horizontal interests. They objected to the agencies' requirement that the offsetting amount be held with respect to every series in the trust, and requested that the agencies permit the offset to be determined on a weighted average basis across all series of outstanding investor ABS interests. Commenters also requested that, if a sponsor held the horizontal interest jointly with an investor, the sponsor be allowed to take credit for its proportional holding in that horizontal interest.

Commenters agreed with the agencies that it is not practicable to create a grandfathered status for seller's interest, since it represents the sponsor's undivided interest in, and exposure to, the common pool of securitized assets in the trust, on a trust-wide basis. Commenters suggested that a revolving pool securitization relying on horizontal interests to offset any portion of the seller's interest should be allowed to do so on a grandfathered basis, whereby the sponsor would only be required to hold that horizontal element with respect to series issued after the applicable effective date of the rule.

Commenters also described a type of revolving pool securitization that securitizes mortgage servicer advance receivables, in which the seller's interest is fully subordinated to all expenses and investor obligations. These commenters requested inclusion of these subordinated interests as part of the master trust option, and inclusion of certain series-specific interest reserve accounts as an offset to the minimum seller's interest.

b. Description of the Final Rule

The agencies are revising the master trust option in the final rule in order to make the option available to more commercial firms that currently rely on revolving pool securitizations as an important component of their funding base. These revisions recognize and accommodate the meaningful exposure to credit risk currently held by sponsors of these vehicles, in light of the heightened alignment of incentives between sponsors and investors that attaches to their revolving nature. The agencies are also making a number of other refinements in the final rule in order to align it more closely with the mechanics of revolving pool securitizations as they are structured in the market today.

The *pari passu* seller's interest option proposed by the agencies represents a special form of over-collateralization for the ABS interests issued by a revolving pool securitization. Under the final rule, sponsors must maintain the size of the seller's interest position, which they most commonly do through the ongoing addition of assets to the pool or repayment of investor ABS interests, if the existing pool is diminished by charge-offs exceeding expected loss rates.

The agencies are also adopting an additional change requested by commenters to accommodate other revolving pool securitizations that are common in the market and rely on over-collateralization in a different manner, which varies between asset classes. Commenters described two different structures, one of which the agencies are persuaded should be recognized as an eligible form of risk retention under the final rule. This form was described by commenters as a common feature of some asset classes, such as equipment leasing and floorplan financing. In these revolving pool securitizations, the sponsor is obligated, as is the case in the *pari passu* seller's interest structure, to maintain an undivided interest in the securitized assets in the collateral pool, in an amount equal to a specified percentage of the trust's outstanding investor ABS interests. Whereas the *pari passu* seller's interest is a trust-level interest equal to a minimum percentage of the revolving pool securitization's combined outstanding investor ABS interests, the minimum percentage in these structures may be tied to the outstanding investor ABS interests in each separate series. While the sponsor's right to receive distributions on the seller's interest included in the reproposal was required to be *pari passu,* the sponsor's right to receive its share of distributions on its subordinated seller's interest may be subordinated to varying extents to the series' share of credit losses.

Importantly, notwithstanding these differences with the *pari passu* seller's interest, the sponsor of this form of revolving pool securitization is still required under the transaction documents to maintain the specified minimum percentage amount of securitized assets in the pool if the securitization is to continue revolving, through the ongoing addition of extra securitized assets to the pool if necessary. The agencies believe this requirement to maintain the specified minimum percentage amount creates incentives for the sponsor to monitor the quality of the securitized assets added to the pool in both structures. If the sponsor replaces depleted pool collateral with poorly underwritten assets, those assets will, in turn, underperform, and the sponsor will be obligated to add even more assets. If this cycle is perpetuated and the specified minimum percentage amount is breached, the deal will enter early amortization, and the sponsor's access to future funding from the structure will be terminated. In consideration of this, the agencies have made modifications so that the final rule recognizes this subordinated form of seller's interest as an eligible form of risk retention for revolving pool securitizations, because the agencies believe this form aligns the interests of sponsors and investors in a manner similar to other forms of risk retention recognized pursuant to the final rule.

The second form of revolving pool securitization described by commenters as used in some asset classes, such as equipment leasing and floorplan financing, represents various types of excess securitized assets. The transaction documents for revolving pool securitizations typically impose eligibility requirements on the securitized assets that are allowed to be included as collateral for purposes of calculating the total amount of outstanding investor ABS interests that may be issued by the revolving trust. According to commenters, these eligibility requirements include concentration limits on securitized assets with common characteristics, such as those originating from a particular manufacturer or dealer or a particular geographic area. The sponsor places assets in the revolving pool securitization that do not meet these requirements (excess concentration receivables), but these ineligible assets are not included when calculating the total amount of outstanding investor ABS interests the revolving pool securitization may issue. Commenters asserted that these ineligible assets are often subject to the pledge of collateral to the ABS investors, but distributions on these assets are typically allocated to the sponsor. Depending on the terms of the securitization, the sponsor's claim to the cash flow from these excess assets may be partially or fully subordinated to investor interests, and these subordination features may be at the trust level, at the series level, or some combination of both.

The agencies are not persuaded that the sponsor's interest in these receivables should be included as eligible risk retention. By their terms, these are assets that are not representative of the assets that stand as the principal repayment source for investor ABS issued by the revolving pool securitization.

To accommodate revolving pool securitizations with subordinated seller's interest, the agencies have revised the distribution language in the definition of seller's interest to include seller's interests that are *pari passu* with each series of investor ABS interests, or partially or fully subordinated to one or more series in identical or varying amounts with respect to the allocation of all distributions and losses on the securitized assets. This language retains the vertical nature of the proposed seller's interest, since the sponsor must receive at least its *pro rata* share of losses on securitized assets through the *pari passu* aspect of the distribution. The sponsor is also free to use its *pari passu* share of distributions from securitized assets to provide loss protection to outstanding investor ABS interests, thereby subordinating its interest. The final rule provides that these levels of subordination may be varied, thereby affording the sponsor flexibility with regard to the extent of this subordination. For example, the sponsor may provide varying levels of subordination to different series, or provide different levels of subordination depending on the occurrence of triggers specified in the transaction documents.

Commenters stated that structures with *pari passu* seller's interest also often include elements of conditional subordination that are included to accommodate investor or rating agency concerns that vary from transaction to transaction. These are also permitted pursuant to the final rule. The agencies believe this flexibility is necessary to accommodate the kinds of variations in current market practice from deal to deal that commenters described in their comment letters. Nevertheless, the flexibility afforded under the rule does not permit the sponsor to participate in distributions to any extent greater than *pari passu*. Therefore, the seller's interest may not be senior to any series of investor ABS interests with respect to allocation of distributions pursuant to the seller's interest.

Commenters asserted that revolving pool securitizations typically provide different distribution regimes for seller's interests if the securitization moves into early amortization. The reproposed rule contained language reflecting this, relieving the seller's interest from the *pari passu* distribution requirement only after an ''early amortization event.'' In response to these comments, the agencies have removed the technical reference to a triggering event and substituted functional language describing a revolving pool securitization in early amortization, as specified in the securitization transaction documents.[79]

In addition, the agencies have modified slightly the operational portion of the final rule text allowing retention of a seller's interest to satisfy a sponsor's risk retention obligation. Whereas the reproposal obligated the sponsor to ''retain a seller's interest of not less than 5 percent,'' the final rule requires the sponsor to ''*maintain* a seller's interest of not less than 5 percent'' (emphasis added). The agencies believe that the sponsor's obligation to replenish the seller's interest underlies the alignment of interests unique to the revolving pool securitization structure. Commenters indicated that there are some forms of subordinated seller's interest that the sponsor is not required to replenish. These do not qualify for the seller's interest option under the final rule.

The definition of seller's interest in the final rule provides that ineligible assets—specifically, assets which are not eligible under the terms of the securitization transaction to be included when making periodic determinations whether the revolving pool securitization holds aggregate securitized assets in the required specified proportions to aggregate outstanding investor ABS interests issued by the revolving pool securitization (*e.g.,* excess concentration receivables)—are not to be considered a component of the seller's interest.[80] By the terms of the transaction documents, these are assets that are typically not representative of the assets that stand as the principal repayment source for investor ABS interests issued by the revolving pool securitization, and the agencies are declining to grant commenter's request that they be recognized as a form of risk retention comparable to the forms of seller's interest recognized under the rule. The agencies have also clarified the proposed exclusion from seller's interest of assets that have been allocated as collateral only for a specific series. As the agencies discussed in the reproposal, this exclusion was designed to accommodate limited forms of exclusion in connection with administering the trust, accumulating principal, and reserving interest.[81] To reflect this condition within the rule text itself, the agencies have revised the exclusion so it applies only to servicing assets.

To address certain comments about the application of the definition of eligible horizontal residual interest to revolving pool securitizations, the agencies have modified paragraph (2) of the definition of eligible horizontal residual interest to refer to allocation dates as well as payment dates.[82] The agencies also confirm that, in applying the eligible horizontal residual interest definition to a revolving securitization with multiple series, the requirements in paragraphs (2) and (3) specifying priority of payment with respect to amounts due to other interest holders and requiring subordination are to be applied with respect to the series supported by the particular eligible horizontal residual interest (including, where applicable, certain delinked structures), and should only be construed to refer to all outstanding investor ABS interests if the eligible horizontal residual interest is, in fact, structured to function as an enhancement to all outstanding investor ABS interests issued by that revolving pool securitization. To accommodate delinked structures, commenters requested that the agencies allow replacement of a subordinate tranche before maturity of the senior tranches it supports. The agencies are not adopting

[79] As discussed above, the definition of seller's interest has also been revised to allow, prior to early amortization, subordinated distributions.

[80] One group of commenters recommended that the agencies simply modify the seller's interest definition to exclude assets within the revolving pool securitization that secure less than all of the ABS interests. The agencies are implementing this approach in a more targeted way by identifying the particular categories of assets to be excluded.

[81] Revised Proposal, 78 FR at 57943, n.52.

[82] Commenters stated that the reproposal's definition of eligible horizontal residual interest refers to loss allocations occurring on ABS interest payment dates, whereas revolving pool securitizations allocate losses periodically, in advance of ABS interest payment dates.

this requested modification. The agencies note that, to serve as risk retention pursuant to the rule, the sponsor must retain an eligible horizontal retention interest for the life of the securitization it supports, and the agencies believe sponsors can readily structure their retained residual interests to achieve this outcome.[83]

The risk retention options described in section 5 of the final rule are available only to a specific category of securitization vehicles, originally defined as ''revolving master trusts'' but now defined as ''revolving pool securitizations.''[84] The option is not available to an issuing entity that issues series of ABS interests at different times collateralized by segregated independent pools of securitized assets within the issuing entity such as a series trust, or an issuing entity that issues shorter-term ABS interests collateralized by a static pool of securitized assets, or an issuing entity with a predetermined re-investment period that precedes an ultimate amortization period.

Commenters expressed concern that language in the revolving pool securitization definition requiring the issuing entity to be ''established to issue on multiple issuance dates one or more series'' would require them to re-constitute their issuing entities. The agencies note that the rule does not require specific statements of intention to issue multiple series in the issuing entity's organizational documents. That being said, the agencies believe that the ability to issue more than one series of ABS interests is one of the defining characteristics of the structure.[85] In light of this, the agencies are replacing the ''one or more'' language with rule text requiring the issuing entity to be established to issue ''more than one'' series. While the rule requires no specialized documentation of this intention to be made in connection with the issuing entity's legal organization, the sponsor must be able to establish that, under the constituent legal powers of the entity pursuant to applicable law, the issuing entity has the authority to issue more than one series. The agencies also recognize that a business organization might establish a revolving pool securitization vehicle and, after issuing one series, changes in circumstances could prevent the sponsor from seeking to issue any additional series, with the structure ceasing to revolve and amortizing out. The agencies typically would not dispute this issuing entity's eligibility under section 5 of the rule in hindsight, absent facts and circumstances indicating the sponsor sought to use the structure to improperly avoid the standard risk retention obligations of section 4 of the rule. A business organization that did so more than once would face a heightened burden to establish that its reliance on section 5 of the rule was not a violation of its obligations under the rule.

The final rule retains the reproposal's requirement that the issuing entity's ABS interests are collateralized by a common pool of securitized assets that will change in composition over time. This is another defining characteristic of a revolving pool securitization eligible to use section 5 of the rule. Under these structures, principal collections on the securitized assets (net of funds required to amortize the principal of outstanding investor ABS interests or to accumulate such funds) are used to purchase additional assets to collateralize existing and future investor ABS interests in the securitization on a revolving basis, with no predetermined end date.[86] Revolving pool securitizations allow sponsors to restructure the cash flows on the securitized assets not only for credit enhancement, but for mismatches between the maturities of the securitized assets and the maturities of ABS interests that are sought by the market on attractive terms.[87]

Commenters requested further clarification about the common pool requirement. One concern centered on the presence of ineligible assets, including so-called ''excess concentration'' receivables. The agencies observe that, on the one hand, these ineligible assets are part of the asset pool, and proceeds from them may even be used to cover losses that would otherwise be allocated to investors. On the other hand, the bulk, or in many cases all, of the proceeds from the ineligible assets are directed to the sponsor, and the receivables are not eligible to be included when determining the revolving pool's limit on outstanding investor ABS interests. The agencies do not consider these arrangements to violate the common pool requirement, though as noted above the final rule does not permit these assets to be included when calculating the size of the seller's interest.

Notwithstanding the agencies' willingness to accommodate these ineligible assets that are allocated to the sponsor, if a revolving pool securitization designated a collateral group as the securitized assets for a specific series, the arrangement would not meet the common pool requirement. In this vein, commenters requested clarification as to whether a revolving pool securitization with collateral groups meets the common pool requirement. Commenters did not provide details about these grouping practices, and the agencies believe the use of collateral groups may not satisfy the common pool requirement. If the arrangement were analogous to a construct with multiple revolving pool securitizations being operated out of a single issuing entity, and the sponsor could demonstrate that each group would comply with the rule's requirements on an independent basis, the arrangement could meet the common pool standard. On the other hand, if the arrangement is analogous to a revolving pool securitization in one group and a series trust in another

[83] The agencies are also concerned that the approach suggested by commenters is inconsistent with the rule's approach to the timing of the fair value determination for retained eligible horizontal residual interests under the standard risk retention option, under which the fair value ratio of residual to ABS interests issued is measured at the time of issuance. Although sponsors noted that the terms of a delinked revolving pool securitization transaction include requirements for minimum levels of subordination to be maintained in connection with the maturity and replacement of subordinated interests, these measures do not necessarily ensure equivalent fair value for a replacement subordination interest. Commenters did not suggest any alternatives to address this area of concern.

[84] The agencies made this change, and eliminated language in the definition requiring the issuing entity to be a ''master trust,'' in response to comments indicating sponsors sometimes organize the issuing entity as a different type of legal entity.

[85] Although ''series'' could be considered a term of art in securitization, it is not a defined term in the rule. The rule text in this regard refers to ''more than one series, class, subclass, or tranche.'' Section 5(a) of the final rule. The agencies believe the text is sufficiently flexible to accommodate, regardless of transaction labels used, the concept of a discrete issuance of ABS interests of a certain maturity, albeit one with a renewable or renegotiated maturity, as well as delinked structures. However, in the same vein, the rule's reference to a class, subclass, or tranche, which are terms commonly used to describe subsets within a series, is not an invitation to sponsors to assert that subdivisions of an issuance qualify as multiple issuances for these purposes.

[86] The agencies also recognize that the extent to which the sponsoring organization utilizes investor funding to fund the securitized assets may vary according to business need, as well as the availability of alternate sources of funds at more favorable rates.

[87] In referring to maturities in this aspect of the discussion, the agencies do not focus on legal maturity, or to effective maturity or duration, as those terms are used in finance, but to the actual lifespan of the assets and interests. For example, in many revolving pool securitizations, such as credit card, automobile floor plan, construction loan, and trade receivable deals, the maturity of the securitized assets is so short that the structure is used to lengthen the maturity of the asset-backed securities to attract investors. In other revolving pool securitizations, such as UK residential mortgage deals, the structure is used to create shorter maturity bullet asset-backed securities to attract investors.

group, the arrangement would be extremely unlikely to satisfy the common pool standard. If distributions and losses from any ''group'' are designated to a single outstanding series, the arrangement would not meet the common pool standard.[88] To accommodate the possibility of a multiple group arrangement, the agencies have modified the rule text of the common pool requirement slightly to eliminate the requirement that the common pool collateralize ''all'' series issued by the revolving pool securitization, as well as a similar requirement in the definition of seller's interest. Nevertheless, a sponsor that relies on section 5 of the rule for a multiple group arrangement bears ultimate responsibility to demonstrate full compliance with the rule's common pool requirement.

As discussed above, the reproposal also noted that revolving pool securitizations do not monetize excess spread, and the agencies invited comment as to whether the rule should be modified to expressly prohibit structures that rely on the seller's interest option from issuing senior interest-only bonds or premium bonds.[89] In light of commenters' concerns about the feasibility of incorporating this restriction into a regulatory requirement and attendant grandfathering issues with respect to structures that have classes of bonds previously issued with idiosyncratic interest rates, the agencies are taking a different approach. The agencies have added to the definition of a revolving pool securitization the requirement that the sponsor does not monetize excess spread from its securitized assets. The ability of a sponsor to meet this standard with respect to its outstanding investor ABS interests depends on the facts and circumstances of the issuance, including whether the revolving pool securitization issues ABS interests that price materially above par in light of all the features of the ABS interests and market conditions, or the revolving pool securitization issues ABS interests that pay investors interest on notional principal absent issuance of a corresponding issuance of principal-only bonds to support the revolving pool securitization.

Consistent with the reproposal, the final rule requires the seller's interest to be not less than 5 percent of the aggregate unpaid principal balance of all outstanding investor ABS interests in the issuing entity. The phrase ''all outstanding investor ABS interests issued'' refers to ABS interests issued to persons other than the sponsor and wholly-owned affiliates of the sponsor. Although the reproposal suggested that ABS interests held by the sponsor would still be treated as outstanding investor ABS interests if those asset-backed securities were ''issued under a series,'' the agencies are simplifying the final rule to eliminate this distinction, which could raise associated interpretive issues as to whether certain retained interests met that description. Accordingly, in determining the 5 percent ratio, a sponsor is not required to include in the denominator the amount of ABS interests that are held by the sponsor or its wholly-owned affiliates, but only if the sponsor (or its wholly-owned affiliates) retains them for the life of the ABS interests. This treatment applies for ABS interests held by the sponsor and its wholly-owned affiliates for purposes of complying with the risk retention rule, or held for other reasons.[90] In order to maintain consistency with a sponsor's disclosures as to the manner of its compliance with the seller's interest requirement, which are communicated to investors in connection with the issuance of a series of ABS interests, the sponsor must make a threshold determination as to whether it intends to retain excluded ABS interests for their life and disclose this election to investors. If a sponsor wishes to retain the flexibility to transfer an ABS interest in the future, the sponsor must, from the time of the issuance of the ABS interest onward, include such ABS interest in the denominator.[91]

The agencies have also added language clarifying that, if the transaction documents set minimum required seller's interest as a proportion of the unpaid principal balance of the outstanding investor ABS interests in one or more identified series, rather than all outstanding investor ABS interests of the revolving pool securitization as a whole, seller's interest may be measured on that basis. However, the percentage of each series' specific seller's interest must (when combined with the percentage of securitization-wide seller's interest, if any) equal at least 5 percent other than for any series issued prior to the applicable effective date. For example, the final rule does not permit a sponsor to include in the numerator of the seller's interest ratio a reserve account that only covers shortfalls of principal and interest payments to holders of a specific series of investor ABS interests.

The final rule requires the 5 percent minimum seller's interest test to be determined and satisfied at the closing of each issuance of ABS interests to investors by the issuing entity, and at least monthly. The agencies have made several adjustments to the measurement details, in response to comments. Sponsors must measure the seller's interest at a seller's interest measurement date specified in the transaction documents at least monthly. If the seller's interest does not meet the minimum percentage requirement on any measurement date and the transaction documents specify a cure period, the minimum percentage requirement must be satisfied within the cure period, but no later than one month after the original measurement date.

For purposes of determining the size of the seller's interest at the closing of each issuance of ABS interests to investors, the final rule permits the sponsor to use a specified ''as of'' date or cut-off date for data in establishing the outstanding value of the revolving pool securitization's securitized assets and an ''as-of'' date or cut-off date for data in establishing the value of the revolving pool securitization's outstanding ABS interests. The agencies expect that sponsors of revolving pool securitizations will, as a practical

[88] The use by a revolving pool securitization of excess cash flows resulting from allocations of distributions to one series of ABS interests as credit enhancement to cover shortfalls in periodic interest obligations, periodic losses, and similar exposures experienced by other specified series of ABS interests (but not all other series of ABS interests) does not violate the common pool requirement. The agencies do not believe this sharing of allocations of distributions among ''groups'' of outstanding series raises the same concerns as separate groups of collateral. Similarly, principal accumulation formulas would not violate the common pool requirement. As discussed above, some revolving pool securitizations allocate principal collections from pool assets during an accumulation phase pursuant to a formula that captures all available principal collections from pool assets that are not otherwise needed for other principal accumulation accounts and acquisition of new pool collateral.

[89] Revised Proposal, 78 FR at 57944.

[90] There are several circumstances in which a sponsor might retain additional ABS interests. Investors may not be inclined to purchase investor ABS interests unless the sponsor holds a greater interest in the securitization transaction. The sponsor's cost of funds to place a subordinated tranche of a series may be greater than the sponsor's cost to fund that tranche through other means, or the sponsor's overall cost of funds may be lower than the funding that can be obtained by issuance of a new series. If the ABS interest is being retained by the sponsor as part of its required risk retention pursuant to the rule, the interest is subject to hedging and transfer restrictions of section 12 of the rule.

[91] An ABS interest retained in this manner and that is not being used to satisfy the minimum risk retention requirements under the rule, and that is excluded from the denominator, is not subject to the restrictions of the final rule that apply to ABS interests retained to meet the risk retention obligations under the final rule. For instance, the sponsor would be permitted to hedge the risks related to holding such an interest.

matter, continue their past practice of using cut-off dates or similar dates as the basis for disclosures about the amount of securitized assets held by the issuing entity, and similarly using investor reporting or distribution dates as the basis for disclosures about the amount of outstanding investor ABS interests. The final rule accommodates this, both for disclosure purposes and for determining compliance with the regulatory minimum seller's interest requirement. The sponsor is required to describe its use of specified dates for these purposes in connection with the associated investor disclosures for the issuance of ABS interests by the revolving pool securitization. In addition, in the interests of ensuring sponsors use up-to-date information, the rule requires the specified dates to be no more than 60 days prior to the date of first use with investors. To accommodate revolving pool securitizations that only make investor distributions quarterly (or less frequently), rather than monthly, the final rule permits the specified dates to be up to 135 days prior to the date of first use with investors.[92]

In addition, the final rule's disclosure requirements require the sponsor to provide pre-sale descriptions of the percentage of seller's interest the sponsor expects to retain at closing. To accommodate this, the final rule permits sponsors to describe adjustments to their specified-date data reflecting increases or decreases for additions or removals of assets the sponsor expects to make before the closing date.[93] The sponsor, in describing the amount of additional investor ABS interest that are expected to be added by the securitization transaction, may also describe other adjustments to the issuing entity's outstanding investor ABS interest data resulting from expected increases and decreases of those interests under the control of the sponsor, such as additional issuances, or scheduled principal payments on outstanding investor ABS interests that the sponsor expects will be made before the closing date. If the amount of seller's interest the sponsor determines that it retains at the closing of the securitization transaction is materially different from the amount described in the pre-closing disclosures, the sponsor must disclose the amount as of closing, within a reasonable time after the closing.

Consistent with the reproposal, the seller's interest amount is the unpaid principal balance of the seller's interest in the common pool of receivables or loans. The minimum required seller's interest cannot be less than 5 percent of the aggregate unpaid principal balance of all outstanding investor ABS interests issued by the issuing entity. The agencies have added language clarifying the measurement of this ratio. Consistent with the definition of seller's interest, the final rule also clarifies that the sponsor may not include in the numerator of the seller's interest ratio ineligible assets, or those servicing assets allocated as collateral for a particular series. The agencies have also added language permitting the sponsor to take a deduction from the denominator (the principal of outstanding investor ABS interests) equal to the amount of funds held in a segregated principal accumulation account for the repayment of outstanding investor ABS interests, subject to certain conditions specified in the rule.[94] For securitized assets without a principal or stated balance, such as royalty payments or leases, the amount of the securitized assets is the value of the collateral as determined under the transaction documents for purposes of measuring the seller's interest required for the revolving pool securitization.

The requirements from the reproposal are unchanged with respect to the holding of the seller's interests. The rule permits wholly-owned affiliates of the sponsor to retain the seller's interest (and the horizontal interests described in section 5 of the rule, described below). The agencies decline to permit holding by majority-owned affiliates, as requested by commenters. The agencies are affording the treatment provided to seller's interest in section 5 of the rule because of the special alignment of incentives created by the sponsor's interest in maintaining access to continued funding through the revolving pool securitization, and the agencies seek to maintain this alignment through this stricter holding requirement under the final rule. The final rule includes changes to the other affiliate-holding provisions within section 5 to maintain consistency with this approach. The final rule also clarifies the provisions allowing seller's interest for ''legacy trust'' assets to be held at either the legacy trust level or the issuing entity level. The final rule, like the reproposal, limits the amount of seller's interest that may be held at the legacy trust level to its proportional share of the combined securitized assets of the two trusts. The text has been clarified to indicate that this proportional share is determined based on the principal balance of the securitized assets in each trust. The final rule also clarifies that the proportion of seller's interest held at the legacy trust level must be equal to this proportion.[95] Commenters requested the agencies permit legacy trusts to retain horizontal forms of risk retention at either level, but the comments did not provide details of these structures. Without more details about the structures commenters seek to accommodate, the agencies have not made changes to section 5 of the rule in this regard.

The agencies made changes requested by commenters to allow for dollar-for-dollar offset from the 5 percent seller's interest requirement for funds maintained in a segregated excess funding account that is funded from distributions otherwise payable to the holder of the seller's interest. The agencies expanded the funding trigger requirements for the account to include the sponsor's failure to meet the minimum seller's interest requirement, and the failure to meet other minimum securitized asset balance tests under the transaction documents.[96] The agencies agree with the commenters that losses would not be allocated to an excess funding account, and have removed a *pari passu* requirement on the priority of such distributions to the account.[97] In order to expand the issuing entity's flexibility slightly to hold the account in a form other than cash deposits, the agencies have also decided to add language permitting investments in the same assets permitted for a horizontal

[92] *See supra* note 62.

[93] In providing the sponsor this operational flexibility, the final rule does not allow the sponsor to adjust the asset total for changes other than additions or removals of assets made by the sponsor itself. Accordingly, the rule does not permit the sponsor to adjust the asset total to take into account seasonal changes in borrowers' revolving credit drawdown rates, expected changes in borrower repayment rates, or other estimated factors.

[94] The terms of the securitization documents must prevent funds in the accumulation account from being applied for any purpose other than the repayment of the unpaid principal of outstanding investor ABS, and the funds in the account may only be invested in the types of assets permitted for a horizontal cash reserve account pursuant to section 4 of the rule.

[95] The reproposal indicated that the legacy trust must hold at least that proportion of seller's interest, but also suggested the sponsor would be permitted to hold a greater proportion of seller's interest at the legacy trust. The final rule clarifies that the proportion must be the same.

[96] Commenters described a common test requiring the principal balance of the securitized assets to be not less than the sum of the numerators used for each series' calculation of its seller's interest ratio to allocate principal collections to the investor ABS interests.

[97] As in the reproposal, the account must, in the event of early amortization, pay out to outstanding investor ABS interest holders in the same manner as distributions on the securitized assets.

cash reserve account pursuant to section 4 of the rule.

The final rule retains the reproposal's provisions allowing the sponsor to reduce its seller's interest to a percentage lower than 5 percent to the extent that, for all series of investor ABS interests issued by the revolving pool securitization, the sponsor retains, at a minimum, a corresponding fair value percentage of subordinated risk retention. This treatment is available with respect to the same two forms of subordinated risk retention the agencies included in the reproposal. As discussed in more detail below, the agencies have revised the requirements of each type slightly, in light of sponsor comments stating that existing structures would not be able to comply with the reproposed rule. An example of the reduction in seller's interest permitted by the final rule is as follows: a revolving pool securitization sponsor holds a seller's interest in the issuing entity's common collateral pool equal to 2 percent of the aggregate balance of outstanding investor ABS interests issued by the securitization. The securitization has two outstanding series; for one series the sponsor retains a residual interest in excess interest and fees with a fair value of 5 percent of the fair value of outstanding investor ABS interests in that series, and for the other, the sponsor retains a horizontal interest with a fair value of 3 percent of the fair value of outstanding investor ABS interests in that series. This revolving pool securitization holds adequate risk retention to comply with section 5 of the rule. So long as the structure in this example only holds 2 percent seller's interest, every future series issued to investors will be required to be supported by at least a 3 percent fair value subordinated interest.

For revolving pool securitizations relying on both seller's interest and subordinated risk retention, commenters requested the agencies grandfather all series issued prior to the applicable effective date of the rule with respect to the subordinated portion of risk retention. For example, for a revolving pool securitization in which the sponsor holds 2 percent seller's interest, these commenters urged the agencies to permit the structure to come into compliance with the rule by continuing to maintain the 2 percent seller's interest and supplement it with at least a 3 percent horizontal interest to support each series issued to investors after the applicable effective date of the rule. Commenters said that, unless the agencies permit this grandfathering approach, a revolving pool securitization with less than 5 percent seller's interest would have no option other than to increase its seller's interest to 5 percent. Commenters asserted it was not feasible to grandfather existing series issued before the applicable effective date of the rule with respect to a seller's interest, since a seller's interest is an interest in the securitization's entire collateral pool, and this factor raises serious obstacles to implementing it on a series-by-series basis. The agencies agree that the grandfathering approach requested by commenters should achieve meaningful risk retention in ABS interests issued in a revolving pool securitization after the applicable effective date of the rule, and the approach is reflected in the final rule text.[98]

In the reproposal, the agencies sought to give revolving pool securitizations the above-described offset credit against a seller's interest for two different forms of horizontal risk retention. The first form was based on the sponsor's interest in excess interest and fees, as described above, made available to the sponsor periodically after covering the trust's expenses, interest due on more senior ABS interests in the series for that payment date, and charge-offs for that period that would otherwise be allocated to more senior ABS interests. Some revolving pool securitizations allocate each series its ratable share of interest and fee collections from the pool collateral and apply the interest and fee collections only within each series, while others permit sharing of excess interest and fee collections to cover shortfalls in another series after application of its share of interest and fee collections. The agencies proposed to allow sponsors to use the fair value of this residual ABS interest in excess interest and fees, as a percentage of the fair value of outstanding investor ABS interests, to reduce their 5 percent minimum seller's interest. As discussed above, commenters said they anticipated the burden of calculating the fair value of these excess interest and fees on a monthly basis would be so high that few, if any, sponsors would avail themselves of the option. The agencies note that this is a residual interest comprised of a stream of future cash flows, and no commenter suggested any other reasonable methodology to assign a value to it for purposes of determining the required amount of risk retention. To address this burden, the final rule does not require the sponsor to disclose its fair value determination to investors monthly. The sponsor also must continue to calculate the fair value of the residual ABS interest in excess interest and fees at the same time the sponsor calculates the seller's interest, to verify that it continues to hold at least the minimum required amount of risk retention.[99]

The agencies have made two clarifying changes to the text of the final rule. First, at the request of commenters, the agencies have eliminated the requirement that the sponsor's residual claim to the interest and fee cash flows for any interest payment period be subordinated to all accrued and payable principal due on the payment date to more senior ABS interests in the series for that period. Commenters asserted this requirement was correct for *interest* due (as the rule provides), but not for principal.[100] The agencies have eliminated the ''and principal'' language contained in the interest subordination paragraph, and have also eliminated the requirement that the residual have the most subordinated claim to any part of the series' share of principal repayment cash flows.[101] In addition, the agencies have clarified that, in applying interest and fees to reduce the series' share of

[98] Specifically, section 5(f) of the rule provides that the seller's interest requirement would be reduced by the subordinated portion of risk retention support for all series of ABS interests issued by the revolving pool securitization after the applicable effective date of the rule.

[99] To reduce burden further, the rule permits the periodic determinations of this residual interest's fair value percentage to be made without re-determining the fair value of the outstanding investor ABS interests in the denominator. The sponsor may, at its option, carry forward the fair values of the outstanding investor ABS interests from the determinations made for the closings of the transactions in which those outstanding investor ABS interests were issued (which are likely to be based on observable market data at that time). Only the fair value of the residual ABS interest in the numerator of the ratio needs to be determined every period. The agencies recognize that, for revolving pool securitizations with one or more amortizing series, this approach may result in a larger denominator and thus a larger residual ABS interest in excess interest and fees. The final rule permits a sponsor to elect to make monthly redeterminations of the fair value of such amortizing series in connection with their periodic determinations.

[100] One group of commenters also said the obligation to pay default-rate interest is typically subordinated to payment of the contract-rate interest and coverage for allocated charge-offs. The agencies regard this as desirable in that it uses available excess spread first to protect investors from losses. At any rate, the arrangement described by commenters in this regard means that the sponsor only claims excess interest and fee collections remaining after covering both types of ''interest,'' which is in compliance with the rule text.

[101] Commenters requested the agencies eliminate the separate waterfall requirement from the option, citing concern that single-waterfall revolving pool securitizations could not utilize the structure. Commenters did not elaborate on how the residual ABS interest in excess interest and fees would be separately identified or valued in such an approach. Since the separate waterfall requirement is a central element of the option, the agencies have retained it.

losses for the applicable period, these losses must include charge-offs that were not covered by available interest and fees in previous periods. The agencies believe this clarification is appropriate to prevent sponsors from receiving payments of excess spread on a period-by-period basis for pools that have suffered un-covered losses on securitized assets in previous periods.[102]

The second form of subordinated risk retention the agencies would have recognized in the reproposal for purposes of reducing the required amount of seller's interest would have been an eligible horizontal residual interest the sponsor simultaneously held in the securitization's outstanding series of ABS interests. The reproposal required these interests to meet all the requirements for the standard form of eligible horizontal residual interest pursuant to section 4 of the reproposed rule. Commenters asserted that revolving pool securitizations that retain a residual ABS interest in excess interest and fees could not simultaneously satisfy the requirement pursuant to section 4 that the eligible horizontal residual interest have the most subordinated claim to interest and principal. Commenters said a residual ABS interest in excess interest and fees is typically structured first to apply a series' share of excess interest and fees each period to cover the series' share of trust expenses and the interest due to each tranche of ABS interests in the series; second to apply remaining excess interest and fees to cover charge-offs allocated to more senior ABS interests in the series; and third to make the remainder available to the sponsor (net of portions shared with other series, in some structures). Commenters said that this subordinated interest is typically structured to pay interest to the holder before excess interest and fee collections are applied to cover the series' share of charge-offs. Accordingly, this residual interest would not have the most subordinated claim to interest.[103] The agencies note that, now that the final rule recognizes subordinated forms of seller's interest, the residual interest may not be the most subordinated claim to principal distributions to the sponsor from the seller's interest, depending on the particulars of the transaction.

In order to permit sponsors to offset their seller's interest with either of the two forms of horizontal risk retention included in the reproposal, the agencies have modified the subordination requirements that would be required for eligible horizontal residual interest, to accommodate the issues described in the preceding paragraph. The final rule provides that a sponsor may take the seller's interest offset for ABS interests that would meet the definition of eligible horizontal residual interest in section 2 of the rule but for the sponsor's simultaneous holding of subordinated seller's interests, residual ABS interest in excess interest and fees, or a combination thereof. In connection with this approach, the sponsor's fair value determination for this horizontal residual interest must not incorporate any value attributable to the sponsor's holdings of subordinated seller's interest or residual ABS interest in excess interest and fees.

Under the final rule, if the sponsor is also taking risk retention credit for its residual ABS interest in excess interest and fees, the sponsor may not include any of the interest payments to itself on this offset eligible horizontal residual interest (''offset EHRI'') in determining the fair value of the offset EHRI. Similarly, if the sponsor is taking risk retention credit for subordinated seller's interest that is used to reduce charge-offs that would otherwise be allocated to reduce the principal of the offset EHRI, the sponsor may not include any principal payments on the offset EHRI in determining the fair value of the offset EHRI. The agencies believe this bright-line rule provides an appropriate compromise between flexibility for sponsors and clarity for investors and regulators as to the nature of the risk retention interests upon which a sponsor relies to comply with the final rule.

Under the final rule, if the sponsor seeks to rely on offset EHRI as part of its risk retention interest for purpose of compliance with the rule, any subordinated seller's interest or residual ABS interest in excess interest and fees retained by the sponsor must also comply with the applicable requirements of section 5 of the rule. This is true even if the sponsor is not asserting reliance on these subordinated seller's interests or residual ABS interests in excess interest and fees as part of its retained risk retention interests to comply with the rule.

Commenters said that sponsors sought the ability to continue incorporating subordinated seller's interest or residual ABS interest in excess interest and fees into their deal structures and simultaneously retain a junior bond, while still having the flexibility to choose which combination of those interests the sponsor would use to comply with the risk retention requirements. Commenters placed particular importance on retaining the flexibility to do this without being required to engage in fair value determinations for the interests the sponsor does not count for purposes of regulatory compliance. Taken together, the agencies believe that these rules for offset EHRI provide an appropriate framework to accommodate that flexibility.[104]

The final rule requires the sponsor to make the percentage fair value determination for offset EHRI, and to make investor disclosures, at the same time and in the same manner as is required for the standard form of eligible horizontal residual interest pursuant to section 4 of the rule. Consistent with the treatment of the standard form of eligible horizontal residual interest pursuant to section 4 of the rule, the sponsor is only required to perform the fair value determination for offset EHRI with respect to the initial issuance of the ABS interests supported by the offset eligible horizontal residual interest. The final rule similarly requires a sponsor using a residual ABS interest in excess interest and fees to disclose the fair value of the interest in the same manner as required for eligible horizontal residual interests pursuant to section 4. To accommodate the fluctuating nature of securitized assets and outstanding investor ABS interests present in revolving pool securitizations, the final rule's valuation and disclosure provisions for offset EHRI and residual ABS interests in excess interest and fees allow the use of specific dates for data on securitized assets and outstanding investor ABS interests, and adjustments to these amounts in connection with pre-sale disclosures. These provisions are the same as those governing the determination of minimum seller's interest, as described above.

Consistent with the agencies' reproposal, the final rule also makes

[102] This eliminates possible incentives for sponsors to attempt to cluster charge-offs into particular periods.

[103] Commenters also said the cash flow restrictions in section 4 were not workable for revolving pool securitizations. As discussed elsewhere in this Supplementary Information, these restrictions are not included in the final rule.

[104] As an example, a sponsor could rely on a pari passu seller's interest and supplement it with the fair value of principal payments on an offset EHRI, at the same time the sponsor retained a residual interest in excess spread but did not rely on that interest for purposes of satisfying its risk retention requirements. Or for a revolving pool securitization of assets that do not generate significant excess spread, the sponsor might rely on a subordinated seller's interest and supplement it with the fair value of interest payments on an offset EHRI, since its residual interest in excess interest and fee collections would provide a lesser contribution to satisfying the sponsor's risk retention obligations.

clear that there is no sunset date for revolving pool securitization risk retention interests. The basis for the agencies' decision to propose a sunset date for risk retention was that sound underwriting is less likely to be effectively promoted by risk retention after a certain period of time has passed and a peak number of delinquencies for an asset class has occurred. In the case of a revolving pool securitization, this rationale does not apply, since the sponsor continually transfers additional assets into the common pool of collateral.[105] For a seller's interest, the rule text continues to specify that the seller's interest must be measured and satisfied at least monthly until no ABS interest in the issuing entity is held by any person which is not a wholly-owned affiliate of the sponsor.[106] For other forms of risk retention employed by a revolving pool securitization sponsor, the applicable provision on sunset is in section 12(f) of the rule. Notably, this provision only lifts the transfer and hedging restrictions of section 12 of the rule at ''the latest of'' amortization of the securitized assets to 33 percent of the original balance, amortization of the principal amount of the ABS interests to 33 percent of their original balance, or two years after closing. Since the common pool of securitized assets continually revolves and the ABS interests typically are not paid principal until maturity, neither the securitized assets nor the ABS interests amortize down to 33 percent of the original unpaid balance (absent an early amortization).

Commenters requested several additional changes concerning the rules for holding and measuring a seller's interest. One commenter requested the agencies strike the element of the definition of seller's interest that describes it as an ABS interest. The commenter requested the agencies allow sponsors to hold anything that was the economic equivalent of the seller's interest, regardless of form. The agencies are not making this change because they believe the rule's definition of ''ABS interest'' provides sufficient flexibility, balanced against the agencies' interest in certainty and clarity regarding how a sponsor achieves compliance with the rule. With respect to the form requirements for an ABS interest, the definition applies to any type of interest, whether certificated or uncertificated, and includes beneficial interests and residual interests. This provides flexibility for sponsors and imposes no specific requirements as to form or documentation, but at the same time maintains a basic requirement for the sponsor to be able to demonstrate that the legal source of its entitlement to payments from, and its obligation to share losses of, the securitized assets are consistent with the rule's requirements for a risk retention interest.

Another group of commenters requested the agencies modify the holding requirements for sponsors reducing their 5 percent seller's interest requirement with offsetting horizontal interests. As described above, the sponsor must demonstrate that it holds the offset percentage as a minimum percentage for every series of outstanding investor ABS interests.[107] Commenters requested the agencies permit sponsors to determine they satisfied the requirement on a weighted average basis taken across all outstanding series. The agencies decline to incorporate this approach because it would result in at least some series of outstanding investor ABS interests with less than 5 percent risk retention. Commenters also requested sponsors be permitted to take partial risk retention credit for horizontal interests the sponsor holds jointly with another party, on a pro rata basis. The agencies note this is not permitted for the standard form of eligible horizontal residual interest, and commenters did not provide sufficient justification for treating offset EHRI any differently.

The agencies revised the disclosure requirements of section 5 of the rule in a manner consistent with the agencies' revisions to the disclosure requirements throughout the rule, with appropriate variations for valuation of seller's interest and offsetting subordinated interests as described above.

The reproposal also included provisions clarifying that a master trust entering early amortization and winding down would not, as a result, violate the rule's requirement that the seller's interest be *pari passu.* Commenters requested changes to the details of these provisions, to reflect more accurately the way early amortization triggers are actually structured. In response to commenter concerns, the agencies have revised the rule text to apply when the securitization has entered early amortization, rather than focusing on the technical trigger events that result in an early amortization commencing.[108] Nevertheless, the agencies also believe that the revisions permitting subordination of the seller's interest make this portion of the final rule less significant than it was when the agencies would have required the seller's interest to be *pari passu.*

For servicing advance receivables, the agencies note that the final rule permits sponsors of revolving pool securitizations to rely on subordinated forms of seller's interest to meet their risk retention requirements, which largely addresses the source of the commenters' concerns.

3. Representative Sample

a. Overview of Reproposal and Public Comment

The original proposal would have allowed a sponsor to satisfy its risk retention requirement for a securitization transaction by retaining ownership of a randomly selected representative sample of assets. To ensure that the sponsor retained exposure to substantially the same type of credit risk as investors in the securitized transaction, the sponsor electing to use the representatives sample option would have been required to construct a ''designated pool'' of assets consisting of at least 1,000 separate assets from which the securitized assets and the assets comprising the representative sample would be drawn. The original proposal also would have required a number of other measures in calculating the representative sample to ensure the integrity of the process of selection, including a requirement to obtain a report regarding agreed-upon procedures from an independent public accounting firm.[109]

[105] Even if the pool consists of receivables created by revolving accounts, successful underwriting of revolving account credits is an ongoing process for the life of the credit line.

[106] The agencies have modified the rule text to clarify that holding by an affiliate for these purposes means holding by a wholly-owned affiliate. This is consistent with the other affiliation requirements of section 5 of the rule.

[107] Commenters also expressed the view that the reproposal did not provide sponsors with the flexibility to offset their minimum seller's interest percentage with a form of horizontal risk retention that supported more than one outstanding series. In this regard, the agencies note that the final rule requires the sponsor to satisfy the minimum floor for every series issued after the applicable effective date of the rule, but that it does not require them to hold that risk retention in each series. The rule does not prevent sponsors from incorporating residual ABS interest in excess interest and fees or offset EHRI that are structured to support more than one series, or structured to support delinked structures, so long as the sponsor demonstrates the structure satisfies the rule's requirements as to the terms of those horizontal interests.

[108] The agencies have also eliminated the paragraph limiting the provision to pools of revolving assets. The language was included in the reproposal based on concerns about potential evasive structures, but the agencies have now directly addressed that issue in the discussion of revolving pool securitizations that amortize without issuing a second series of investor ABS interests collateralized by the common pool of assets.

[109] *See* Original Proposal, 76 FR at 24104.

Many commenters opposed the representative sample in the original proposal, noting that it would be impractical to implement this option for a variety of reasons, including that it would be unworkable with respect to various asset classes, would be subject to manipulation, and was too burdensome with respect to its disclosure requirements. Due to these concerns and a conclusion that the representative sample option would likely be too difficult to implement, the agencies did not include a representative sample option in the reproposed rule. Instead, the agencies invited comment on whether a representative sample option should be included as a form of risk retention, and, if so, how should such an option be constructed, and what benefits such an option might provide.

The agencies received several responses to this request for comment. While some commenters were supportive of the reproposal's elimination of the representative sample option, many commenters urged the agencies to reconsider including the option in a simplified form. Several commenters recommended a simplified version of a representative sample option similar to the representative sample option included in the FDIC's safe harbor for securitizations, which (prior to the applicable effective date of the final rule) requires that the retained sample be representative of the securitized asset pool, but does not specify the requirements for establishing that the sample is representative and, accordingly, does not itemize specific items, such as servicing, accountant reports or other requirements.[110] Commenters asserted that the representative sample option is one of the two permitted forms of risk retention under the existing FDIC safe harbor and that the approach has been working effectively for several banks that issue asset-backed securities. One commenter stated that its sponsor members would strongly prefer to have a representative sample method as an alternative option, even if the final rule is more burdensome than they would prefer.

Commenters indicated that the representative sample is one of the alternative methods of risk retention permitted under Article 122a of the European Union's Capital Markets Directive, and that if the representative sample is not included it may place U.S. issuers at a competitive disadvantage against asset-backed securities issuers from outside the United States, and could make it more difficult for global offerings of asset-backed securities originated outside the United States to be sold to investors in the United States.

Many commenters indicated that a revised representative sample option would be particularly useful for automobile loan and lease securitizations. Commenters also stated that the option would be useful more generally for large pools of consumer or retail assets, such as student loans, and for sponsors that do not securitize all of their assets. In order to facilitate use by sponsors for these types of securitizations, commenters generally agreed that the agencies should revise the option so that (i) a sponsor selects a designated pool of assets for securitization (ii) then uses a random selection process to select a 'sample' of assets with an aggregate unpaid principal balance equal to 5 percent of the pool and (iii) that the pool should be sufficiently large to ensure that the sample is representative of the assets in the pool. To accomplish (iii), commenters suggested that a pool size of 5,500 or 6,000 loans would be sufficient to achieve a high confidence level that the sample shares significant asset characteristics with the securitized pool.

A commenter suggested that additional criteria could be added such as documentation of material asset characteristics and a description of the policies and procedures that the sponsor used to ensure that the sample identification process complies with the risk retention requirement. The commenter also recommended that documentation identifying the representative sample be maintained for the same duration required for a vertical risk retention interest and that the assets be excluded from the securitization pool and from any other securitization for such time period. Other commenters favored simpler disclosures, such as a statement that the composition of the sample was prepared in accordance with the rule's requirements, and a description of the method used to randomly select assets.

A few commenters suggested that additional criteria could be added specifically to address smaller pool sizes, such as the criteria above, or a 'resampling' requirement if the sample is not sufficiently similar to the securitized pool. Other commenters expressed the view that a sponsor should not be required to 'rework' the pool based on a post hoc examination of the performance of the sample pool compared to the securitized pool.

b. Response to Comments and Final Rule

Having considered the comments, the agencies have concluded that adopting the recommendations made by commenters would be insufficient to address concerns about the practicality of obtaining an adequate and truly representative sample, while providing sufficient flexibility for use of the option in more than extremely limited scenarios. Furthermore, the agencies concur with commenters' views that, at a minimum, a large number of loans would be required depending on the variability of asset characteristics in order to ensure an adequate sample, which greatly reduces the number of asset classes that would be able to utilize the option.

The agencies do not believe that adopting the disclosure, servicing, and independent review requirements as recommended by commenters would be sufficiently robust to ensure the effectiveness of the representative sample option and to minimize the ability of sponsors to ''cherry pick'' assets favorable to them, which would result in the risk retention sample having a better risk profile than the assets collateralizing the ABS issued to investors. In addition, unless large pools of loans are already largely homogeneous, a random sample will not necessarily be a representative sample. The agencies do not believe that effective pool consistency standards would be any less burdensome or objectionable than the sample validation standards. Even if an approach that met the requirements of section 15G of the Exchange Act could be developed, the agencies acknowledge that the costs of such requirements could be overly burdensome for sponsors. Furthermore, in light of the revisions that have been made to other aspects of the rule, the agencies believe that the final rule's risk retention options should provide a workable risk retention option for various asset classes including auto loan, auto lease, and student loan securitizations. The agencies believe these additional risk retention options will be more cost effective than the representative sample option in the original proposal and will more effectively align the interests of sponsors and investors. Therefore, the final rule does not include a representative sample option.

[110] *See* 12 CFR 360.6.

4. Asset-Backed Commercial Paper Conduits

a. Overview of the Reproposal and Public Comments

As explained in the original proposal and reproposal, ABCP is a type of liability that is typically issued to investors by a special purpose vehicle (commonly referred to as a ''conduit'') sponsored by a financial institution or other sponsor. The commercial paper issued by the ABCP conduit is collateralized by a pool of asset-backed securities, which may change over the life of the entity. Depending on the type of ABCP conduit, the securitized assets collateralizing the ABS interests that support the ABCP may consist of a wide range of assets including securitized automobile loans, commercial loans, trade receivables, credit card receivables, student loans, and other loans. Historically, these programs came about as a way for banks to extend commercial firms credit at a lower cost than bank-funded working capital lines or trade receivable financing. Like other types of commercial paper, the term of ABCP typically is short, and the liabilities are ''rolled,'' or refinanced, at regular intervals. Thus, ABCP conduits generally fund longer-term assets with shorter-term liabilities.[111] During the financial crisis, however, ABCP conduits experienced acute distress, which revealed significant structural weaknesses in certain ABCP conduit structures, particularly those ABCP conduits that did not have 100 percent liquidity commitments, and exposed investors and the financial system to significant risks.[112]

In a typical ABCP conduit, the sponsor approves the originators whose loans or receivables will collateralize the ABS interests that support the ABCP issued by the conduit. Banks can use ABCP conduits that they sponsor to meet the borrowing needs of a bank customer and offer that customer a more attractive cost of funds than a commercial loan or a traditional debt or equity financing. In such a transaction, the customer (an ''originator-seller'') may sell loans or receivables to an intermediate, bankruptcy remote SPV. The credit risk of the loans or receivables transferred to the intermediate SPV then typically is separated into two classes—a senior ABS interest that is acquired by the ABCP conduit and a residual ABS interest that absorbs first losses on the loans or receivables and that is retained by the originator-seller. The residual ABS interest retained by the originator-seller typically is sized with the intention that it be sufficiently large to absorb all losses on the securitized assets.

In this structure, the ABCP conduit, in turn, issues short-term ABCP that is collateralized by the senior ABS interests purchased from one or more intermediate SPVs (which are supported by the subordination provided by the residual ABS interests retained by the originator-sellers). The sponsor of this type of ABCP conduit, which is usually a bank or other regulated financial institution or an affiliate or subsidiary of a bank or other regulated financial institution, also typically provides (or arranges for another regulated financial institution or group of financial institution to provide) 100 percent liquidity coverage on the ABCP issued by the conduit. This liquidity coverage typically requires the support provider to provide funding to, or purchase assets or ABCP from, the ABCP conduit in the event that the conduit lacks the funds necessary to repay maturing ABCP issued by the conduit.

The agencies' original proposal included an ABCP option that incorporated several conditions designed to ensure that the ABCP option would have been available only to the type of single-seller or multi-seller ABCP conduits described above. The proposed ABCP option would only have been available to ABCP conduits that issued ABCP with a maximum maturity at the time of issuance of nine months. Under the original proposal, a sponsor of an ABCP conduit program would have been eligible for the proposed ABCP option if a ''regulated liquidity provider'' (defined in the rule generally to mean banks and certain bank affiliates) provided 100 percent liquidity support to the ABCP conduit and the originator-sellers retained a 5 percent horizontal residual interest in each intermediate special purpose vehicle containing the assets they finance through the ABCP conduit. Under the original proposal, this risk retention option would have been available to ABCP conduits collateralized by ABS interests that were issued or initially sold by intermediate SPVs that sold ABS interests exclusively to ABCP conduits and would not have been available to ABCP conduits that purchased securities in the secondary market or operated securities arbitrage programs.[113]

In the reproposal, the agencies maintained an option tailored for ABCP securitization transactions that retained the basic structure of the original proposal with modifications based in part on comments. The modifications were intended to accommodate certain market practices referred to by commenters, while maintaining a meaningful risk retention requirement. The reproposal would have permitted the sponsor of an eligible ABCP conduit to satisfy its risk retention requirement if, for each ABS interest the ABCP conduit acquired from an intermediate SPV, the intermediate SPV's sponsor (the 'originator-seller' with respect to the ABCP conduit) retained an exposure to the assets collateralizing the intermediate SPV in the appropriate form and amount under the rule, provided that all other conditions to this option were satisfied. The agencies reaffirmed the view expressed in the original proposal that such an approach is appropriate in light of the considerations set forth in section 15G(d)(2) of the Exchange Act.[114]

In response to comments, the reproposal would have included additional flexibility not present in the original proposal to permit affiliated groups of originator-sellers to finance credits through a single intermediate SPV. Under the reproposal, both an originator-seller and a ''majority-owned originator-seller affiliate'' (majority-owned OS affiliate) could have sold or transferred assets that these entities had originated to an intermediate SPV. A majority-owned OS affiliate was defined as an entity that, directly or indirectly, majority controls, is majority controlled by, or is under common majority control with, an originator-seller. For purposes of this definition, majority control would have meant ownership of more than 50 percent of the equity of an entity or ownership of any other controlling financial interest in the entity, as determined under GAAP. However, consistent with the original proposal, intermediate SPVs would not be permitted to acquire assets from non-affiliates.

The reproposal required the ABCP conduit sponsor to: (i) Approve each originator-seller and majority-owned OS affiliate permitted to sell or transfer

[111] *See* section 9 of the Original Proposal.

[112] Daniel M. Covitz, Nellie Liang, and Gustavo A. Suarez, ''The Evolution of a Financial Crisis: Panic in the Asset-Backed Commercial Paper Market,'' Finance and Economics Discussion Series 2009–36 (Washington: Board of Governors of the Federal Reserve System, August 2009).

[113] Such ABCP conduits purchase securities in the secondary market and typically either lack such liquidity facilities or have liquidity coverage that is more limited than those of the ABCP conduits eligible to rely on this option for purposes of the proposed rule.

[114] *See* Revised Proposal, 78 FR at 57949; Original Proposal, 76 FR at 24107.

assets, directly or indirectly, to an intermediate SPV from which an eligible ABCP conduit acquires ABS interests; (ii) approve each intermediate SPV from which an eligible ABCP conduit is permitted to acquire ABS interests; (iii) establish criteria governing the ABS interests, and the assets underlying the ABS interests, acquired by the ABCP conduit; (iv) administer the ABCP conduit by monitoring the ABS interests acquired by the ABCP conduit and the assets supporting those ABS interests, arranging for debt placement, compiling monthly reports, and ensuring compliance with the ABCP conduit documents and with the ABCP conduit's credit and investment policy; and (v) maintain and adhere to policies and procedures for ensuring that the requirements described above have been met.

The reproposal also permitted there to be one or more intermediate SPVs between an originator-seller and/or any majority-owned OS affiliate and the intermediate SPV that issues ABS interests purchased by the ABCP conduit.[115] The reproposal redefined ''intermediate SPV'' as a direct or indirect wholly-owned affiliate[116] of the originator-seller that is bankruptcy remote or otherwise isolated for insolvency purposes from the eligible ABCP conduit, the originator-seller, and any majority-owned OS affiliate that, directly or indirectly, sells or transfers assets to such intermediate SPV.[117] Consequently, an intermediate SPV was permitted to acquire assets originated by the originator-seller or one or more of its majority-owned OS affiliates, or it could also have acquired assets from another intermediate SPV or asset-backed securities from another intermediate SPV collateralized solely by securitized assets originated by the originator-seller or one or more of its majority-owned OS affiliate and servicing assets.[118] ABS interests collateralized by assets not originated by the originator-seller or by a majority-owned OS affiliate would have been ineligible as collateral for the ABCP conduit.

The reproposal also would have relaxed activity restrictions on intermediate SPVs, by permitting an intermediate SPV to sell asset-backed securities that it issues to third parties other than ABCP conduits.[119]

The reproposal would have clarified and expanded (as compared to the original proposal) the types of collateral that an eligible ABCP conduit could acquire from an originator-seller and its majority-owned affiliates.[120] Under the revised reproposal definition of ''eligible ABCP conduit'', an ABCP conduit could acquire any of the following types of assets: (1) ABS interests collateralized by securitized assets originated by an originator-seller or one or more majority-owned OS affiliates of the originator-seller and servicing assets; (2) special units of beneficial interest or similar interests in a trust or special purpose vehicle that retains legal title to leased property underlying leases that are transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases originated by an originator-seller or one or more majority-owned OS affiliates and servicing assets; and (3) interests in a revolving master trust collateralized solely by assets originated by an originator-seller or one or more majority-owned OS affiliates and servicing assets.[121] Under the proposal, the ABCP option would have been available only for ABCP conduits that were bankruptcy remote or otherwise isolated from insolvency of the sponsor and from any intermediate SPV. Assets other than the ABS interests and servicing assets, such as loans or receivables purchased directly by an ABCP conduit or loans or receivables acquired by an originator-seller, its majority-owned OS affiliates or an intermediate SPV in the secondary market, would have been expressly disqualified.

The reproposal also would have expanded the risk retention options available to an originator-seller, in its capacity as sponsor of the underlying ABS interests issued by the intermediate SPV, by allowing an eligible ABCP conduit to purchase interests for which the originator-seller or a majority-owned OS affiliate retained risk using the standard risk retention or seller's interest options.

The reproposal also would have required a regulated liquidity provider to enter into a legally binding commitment to provide 100 percent liquidity coverage of all the ABCP issued by the issuing entity and would have clarified that 100 percent liquidity coverage means that, in the event that the ABCP conduit is unable for any reason to repay maturing ABCP issued by the issuing entity, the total amount for which the liquidity provider may be obligated is equal to 100 percent of the amount of ABCP outstanding plus accrued and unpaid interest. In response to commenters on the original proposal, the reproposal clarified that the required liquidity coverage would not be subject to credit performance of the ABS interests held by the ABCP conduit or reduced by the amount of credit support provided to the ABCP conduit and that liquidity coverage that only funds performing assets will not meet the requirements of the ABCP option.

Consistent with the original proposal, under the reproposal the sponsor of an eligible ABCP conduit would have retained responsibility for ensuring compliance with the requirements of the ABCP option.[122]

With respect to disclosures, the reproposal did not include a requirement that the sponsor of the ABCP conduit disclose the names of the originator-sellers who sponsored the ABS interests held by the ABCP conduit and instead included a requirement that an ABCP conduit sponsor promptly notify investors, the Commission, and its appropriate Federal banking agency, if any, in writing of (1) the name and form of organization of any originator-seller that fails to maintain its risk retention as required and the amount of asset-backed securities issued by an intermediate SPV of such originator-

[115] As indicated in the comments on the original proposal, there are instances where, for legal or other purposes, there is a need for multiple intermediate SPVs.

[116] *See* section 2 of the Revised Proposal (definition of ''affiliate'').

[117] *See* section 2 of the Revised Proposal (definition of ''Intermediate SPV'').

[118] The reproposal required each intermediate SPV in structures with one or more multiple intermediate SPVs that do not issue asset-backed securities collateralized solely by ABS interests to be a pass-through entity that either transfers assets to another SPV in anticipation of securitization (*e.g.,* a depositor) or transfer ABS interests to the ABCP conduit or another intermediate SPV.

[119] As explained in the reproposal, the agencies believe that some originator-sellers operate a revolving master trust to finance extensions of credit the originator-seller creates in connection with its business operations. The master trust sometimes issues a series of asset-backed securities collateralized by an interest in those credits directly to investors through a private placement transaction or registered offering, and other times issues an interest to an eligible ABCP conduit. The reproposal was designed to accommodate such practices.

[120] The purpose of this clarification was to allow originator-sellers certain additional flexibility in structuring their participation in eligible ABCP conduits, while retaining the core principle that the assets being financed have been originated by the originator-seller or a majority-controlled OS affiliate, not purchased in the secondary market and aggregated.

[121] The definition of ''servicing assets'' is discussed in Part II.B of this Supplementary Information. The agencies are allowing an ABCP conduit to hold servicing assets.

[122] In response to commenters on the original proposal who requested that the agencies replace the monitoring obligation with a contractual obligation of an originator-seller to maintain compliance, the agencies noted their belief that the sponsor of an ABCP conduit is in the best position to monitor compliance by originator-sellers and majority-owned OS affiliates.

seller and held by the ABCP conduit; (2) the name and form of organization of any originator-seller or majority-owned OS affiliate that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of its risk retention requirements and the amount of asset-backed securities issued by an intermediate SPV of such originator-seller or majority-owned OS affiliate and held by the ABCP conduit; and (3) and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such asset-backed securities. Consistent with the original proposal, the reproposal would have required the sponsor of an ABCP conduit to provide to each purchaser of ABCP information regarding the regulated liquidity provider, a description of the liquidity coverage, and notice of any failure to fund. The reproposal also retained the requirement that a sponsor provide information regarding the collateral underlying ABS interests held by the ABCP conduit and entities holding risk retention, as well as a description of the risk retention interests. The reproposal also retained the requirement that a sponsor provide to the appropriate Federal regulators, upon request, all of the information required to be provided to investors, as well as the name and form of organization of each originator-seller or majority-owned OS affiliate retaining an interest in the underlying securitization transactions.[123]

Finally, under the reproposal, the sponsor of an ABCP conduit would have been required to take other appropriate steps upon learning of a violation by an originator-seller or majority-owned OS affiliate of its risk retention obligations, and listed, as examples of steps that may be taken, curing any breach of the requirements, or removing from the eligible ABCP conduit any asset-backed security that does not comply with the applicable requirements.

Many commenters expressed general support for the revisions made to the ABCP option and stated that the reproposal provided significantly more flexibility than the original proposal. However, commenters also indicated that additional revisions would be necessary in order to ensure that the ABCP option is available to the types of ABCP programs predominantly available in the current market.

Many commenters requested that the agencies permit additional forms of risk retention within the ABCP option. Commenters encouraged the agencies to recognize standby letters of credit, guarantees, liquidity facilities, unfunded liquidity, asset purchase agreements, repurchase agreements, and other similar support arrangements and credit enhancements to satisfy the risk retention requirement. Commenters expressed the view that allowing such additional forms of risk retention would reduce the inconsistency between the European Union risk retention regime and the U.S. proposal, thus improving the possibility of cross border offerings.[124] Commenters asserted that these ABCP conduit features serve the purpose of credit risk retention by allocating credit risk between asset originators and ABCP conduit sponsors, and aligning incentives between ABCP conduit sponsors and investors. For example, one commenter asserted that under existing market practice, transferors of assets into ABCP conduits routinely retain credit risk in the financed assets in an amount equal to not less than 5 percent of the related subordinated ABCP notes, so that there is no need for the rule to impose duplicative risk retention requirements on ABCP conduit managers.

Another commenter asserted that the reproposed rule would increase the costs of ABCP conduits and substantially reduce the market for ABCP financing, and that the rules were not necessary to promote high-quality underwriting of ABCP, which the commenter asserted is already present in the multi-seller ABCP conduits operating in the current markets. This commenter proposed that sponsors of ABCP collateralized by originator-seller asset pools that are underwritten to high credit quality standards should be permitted to fund 5 percent risk retention either through a cash reserve or through a cash substitute (*e.g.,* irrevocable unconditional letter of credit or credit facility) and should be permitted to rely on committed liquidity facilities that are limited to financing only performing assets.

One commenter expressed the view that the risk retention requirement should not apply to ABCP conduits collateralized by repurchase agreements because the repurchase agreements provide liquidity. One commenter stated that some conduits do not apply asset collections to the payment of ABCP issued by such conduits but instead, in the ordinary course, pay their maturing notes directly from funds provided by their liquidity support providers. This commenter stated that, although the agencies have to date declined to recognize unfunded loan commitments to ABCP conduits as valid risk retention, a repurchase counterparty is contractually obligated from the outset to repurchase the assets from the ABCP conduit, and therefore retains credit risk throughout the term of the transaction.[125]

Many commenters requested a full exemption from risk retention under section 15G of the Exchange Act for ABCP conduits with certain features or structures. For example, one commenter asserted that fully-supported bank-sponsored conduits should be exempt from risk retention, regardless of whether the conduit satisfied other criteria set forth in the rule, because 100 percent of the credit risk is retained by the bank sponsor, and the only risk to investors would be the risk of the sponsoring institution itself.

Some commenters asserted that arrangers and managers of ABCP conduits are not ''sponsors,'' and claimed that there is no valid basis for imposing risk retention requirements on these parties. One commenter asked for clarification as to who will be deemed a sponsor of ABCP issued by an ABCP conduit. One of these commenters disagreed with the agencies' position that in selecting the assets, one can be characterized as ''transferring'' those assets to the issuer. This commenter expressed the view that the word ''transfer,'' as used in section 15G and in the reproposal, cannot reasonably be interpreted to include a conduit manager's selection of the assets that its conduit will purchase. This commenter cited to case law that the term ''transfer'' should be defined by reference to its ''commonly accepted meaning''; and a conduit manager does not itself sell, assign or deliver any assets to the conduit, so that it has not engaged in a ''transfer.''

Several commenters expressed the view that the proposed nine-month restriction on the maximum maturity at issuance for ABCP would be unnecessarily restrictive. Commenters asserted that while historical commercial paper maturities may have been shorter, many aspects of the international liquidity standards for banking organizations established by the Basel Committee on Banking Supervision's ''Basel liquidity

[123] *See* Revised Proposal, 78 FR at 57948.

[124] The European Union credit risk retention regime consists of Articles 405–410 of the Capital Requirements Regulation developed by the European Banking Authority, and is available at *https://www.eba.europa.eu/regulation-and-policy/single-rulebook/interactive-single-rulebook/-/interactive-single-rulebook/toc/504.*

[125] The agencies do not believe there is sufficient basis to distinguish an ABCP conduit collateralized by repurchase agreements from other issuances of ABS interests. As a result, the sponsor of an ABCP conduit collateralized by repurchase agreements would be required to satisfy the requirements of the final rule.

standards,'' including the liquidity coverage ratio and the proposed net stable funding ratio may combine to push average maturities out further. To address these concerns, commenters suggested that the maximum maturity for ABCP held by an eligible ABCP conduit be extended to 397 days, which is the maximum remaining maturity for securities that are eligible for purchase by money market mutual funds pursuant to Rule 2a–7 under the Investment Company Act of 1940, as amended.[126]

The agencies received several comments regarding the definition of ''eligible ABCP conduit.'' Several commenters expressed concern that limitations on assets that may be acquired by ABCP conduits were too restrictive. Commenters stated that many ABCP conduits hold assets that are not asset-backed securities, such as loans or receivables purchased directly from originators under a deferred purchase price note, which the commenters asserted is a customary structure by which conduits now finance originator-seller's assets, not the originator-seller securitization structure required by the reproposal. Commenters also expressed concern that ABCP conduits often hold asset-backed securities that are acquired from various sources, including other ABCP conduits and in the secondary market. One commenter asserted that there is no need to limit permitted investments of fully supported conduits, because investors in ABCP issued by fully-supported conduits base their investment decisions on the liquidity provider's financial strength and reputation (rather than relying on asset quality). A few commenters requested that the ABCP option be modified to permit originator-sellers to convey to intermediate SPVs, in addition to assets originated by them, assets acquired in business combinations and asset purchases.

Another commenter asserted that the proposed limitation on eligible collateral would not permit conduits to acquire assets through an assignment from another ABCP conduit. One commenter requested that the final rules permit transfers between conduits with a common liquidity provider and transfers of positions between one funding agent/liquidity provider/conduit group and another such group.

Several commenters expressed concern regarding the proposed definition of 100 percent liquidity coverage, noting that a significant percentage of existing conduits are partially-supported or do not have 100 percent liquidity coverage as defined by the proposal. Most of these commenters suggested that the definition of 100 percent liquidity coverage be revised to include coverage in a structure under which the liquidity provider's funding obligation is reduced by non-performing or defaulted assets, if the conduit includes some form of credit enhancement equal to at least 5 percent of the outstanding ABCP. One commenter requested that the agencies align the 100 percent liquidity coverage requirement with the regulatory capital treatment applicable to unfunded credit enhancements under the Basel regulatory capital framework for banking organizations, which generally calculates a banking organization's exposure to an eligible ABCP liquidity facility based on the maximum potential amount that the banking organization could be required to fund given the ABCP program's current underlying assets (calculated without regard to the current credit quality of those assets).

Several commenters interpreted the reproposal's requirement that an eligible ABCP conduit obtain from a regulated liquidity provider a legally binding commitment to provide 100 percent liquidity coverage to all the ABCP issued by the ABCP conduit as limiting an ABCP conduit to one regulated liquidity provider. Commenters opposed the requirement in the definition of ''eligible ABCP conduit'' that requires liquidity support from a single liquidity provider. One of these commenters suggested that, although most fully-supported multi-seller conduits currently have 100 percent liquidity support from an affiliate of the conduit manager, the final rule permit conduits to have multiple liquidity providers.

Other commenters stated that syndication of backstop liquidity is market practice, and that there is no reason to limit the number of liquidity providers. One commenter recommended that the agencies revise the definition of ''eligible ABCP conduit'' to clarify that eligible liquidity facilities may include facilities entered into by an affiliate of a regulated liquidity provider, if the regulated liquidity provider unconditionally guarantees its affiliate's obligations.

Commenters generally supported the proposed definition of majority-owned OS affiliate. One commenter observed that the rule text in the reproposal only referred to the originator-seller as the risk retainer, but does not mention its majority-controlled affiliates. This commenter requested that the final rules conform to the preamble of the original proposal by stating that majority-controlled originator-seller affiliates (including an SPV) can satisfy the originator-seller's risk retention requirements.

The agencies received several comments on the proposed definition of intermediate SPV. One commenter stated that in certain circumstances an intermediate SPV is not a direct or indirect wholly owned affiliate of the originator-seller but instead is an ''orphan'' SPV that is owned by a corporate service provider or a charitable trust.

One commenter stated that it was not clear under the reproposal whether an ABCP conduit sponsor would no longer be able to rely on the option if a single asset held by its conduit does not comply with the rule. This commenter requested that the rule prescribe cure periods (of not less than 30 days) and threshold amounts (1 percent of the conduit's assets), so that the conduit will not be forced to unwind based on a single noncompliant asset.

Commenters raised several concerns with respect to the reproposal's disclosure requirements for the ABCP option. One commenter indicated that the asset disclosures in ABCP programs are collectively negotiated and agreed-upon by ABCP investors and conduit arrangers, and the reproposal's calculation and reporting requirements would deter borrowers from financing assets through ABCP conduits.

One commenter indicated that the scope of the proposed disclosure requirements set forth in section 4(c) of the reproposal is unclear, and the proposed requirement to disclose fair value calculations and supporting information would not be feasible. This commenter said that because the conduits typically treat their extensions of credit as loans for accounting purposes, and do not periodically revalue the assets, a requirement to disclose fair value would not conform to existing accounting practices. This commenter stated that many ABCP financings are revolving transactions in which the principal balance of the outstanding notes may change every business day. This commenter also asserted that, because investors in fully supported conduits do not rely on the market value of the assets in their investment decisions, there would be no need to require fully supported conduits to provide asset-level disclosures. The commenter also asserted that to the extent a conduit finances assets for many different originator-sellers, the volume and frequency of disclosures under this requirement would be substantial and unreasonable. This

[126] *See* 17 CFR 270.2a7.

commenter expressed the view that the agencies should not impose unnecessarily broad disclosure requirements that would result in a narrowing of the short-term financing options available to businesses. Another commenter said that the requirement to report the fair value of each of the conduit's interests is unduly burdensome to a sponsor, given the dynamic nature of a conduit's assets. This commenter proposed that a sponsor be required to report only certain items.

Some commenters stated that investors in ABCP fully supported by liquidity facilities do not want or need disclosure from conduit managers of an originator-seller's failure to comply with risk retention requirements. One of these commenters stated that the disclosure requirement would discourage originators from financing assets through ABCP conduits. This commenter stated that since the reproposal did not generally require sponsors of an ABS interests to notify investors of the failure to comply with risk retention requirements, and it was not clear why this obligation was imposed solely for fully-supported ABCP conduits.

One commenter asserted that a sponsor should not be required to develop separate policies or procedures to actively monitor each originator-seller; instead a sponsor should be allowed to rely on an originator-seller's representations and warranties in satisfying its compliance and monitoring requirements. This commenter also proposed that a sponsor be required to notify only regulators upon the actual discovery or knowledge of an originator-seller's failure to comply.

One commenter asserted that investors have generally not requested any significant changes to ABCP disclosure requirements in recent years, and that reports currently being made contain sufficient information for ABCP investors to monitor their investments, especially since the most important economic factors will continue to be the performance of the assets themselves, the 100 percent liquidity coverage, and (in the case of partially supported ABCP conduits) the sponsor's 5 percent or more credit enhancement—but not continued risk retention on the part of the originator-sellers.

Some commenters requested a complete exemption from the credit risk retention requirements for conduits with underlying assets that were originated before the applicable effective date of the rule that may be securitized through an ABCP conduit. One commenter claimed that it would be impractical to impose credit risk retention on an originator-seller that has already entered into a financing transaction with a conduit, because the conduits would not be able to timely renegotiate terms.

b. Overview of the Final Rule

The final rule includes a specific option for ABCP securitization transactions that retains the basic structure of the reproposed ABCP option, with modifications intended to address issues raised by commenters. As with the reproposal, the final rule provides that an eligible ABCP conduit sponsor will satisfy the base risk retention requirement if, for each ABS interest the ABCP conduit acquires from an intermediate SPV, the intermediate SPV's originator-seller [127] retains an economic interest in the credit risk of the assets collateralizing the ABS interest acquired by the eligible ABCP conduit using either standard risk retention or the revolving pool securitization risk retention option (as revised in the final rule).[128] As noted in the reproposal, the use of the ABCP option by the sponsor of an eligible ABCP conduit does not relieve the originator-seller from its independent obligation to comply with its own risk retention obligations as a sponsor of an ABS interest under the revised proposal, if any. The originator-seller will be the sponsor of the asset-backed securities issued by an intermediate SPV and will therefore be required under the final rule to hold an economic interest in the credit risk of the assets collateralizing the asset-backed securities issued by the intermediate SPV.

Under the final rule, a sponsor of an ABCP conduit is not limited to using the ABCP option to satisfy its risk retention requirements. An ABCP conduit sponsor may rely on any of the risk retention options described in section 4 of the rule, provided it meets the criteria for such option. Consistent with the reproposal, standby letters of credit, guarantees, repurchase agreements, asset purchase agreements, and other unfunded forms of credit enhancement cannot be used to satisfy the risk retention requirement.

In response to comments questioning the application of the rule's requirements to an ABCP conduit arranger or manager, the agencies are affirming their view that an arranger or manager of an ABCP conduit is a sponsor or ''securitizer'' under section 15G of the Exchange Act. The agencies believe this is consistent with part (B) of the definition of securitizer which includes ''a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.'' [129] The arranger or manager of an ABCP conduit typically organizes and initiates the transaction as it selects and approves the originators whose loans or receivables will collateralize the ABS interests that support the ABCP issued by the conduit. It also indirectly transfers the securitized assets to the ABCP issuing entity by selecting and directing the ABCP issuing entity to purchase ABS interests collateralized by the securitized assets. The agencies believe that reading the definition of securitizer to include a typical arranger or manager of an ABCP conduit is consistent with the purposes of the statute and principles of statutory interpretation. Furthermore, the agencies believe that the narrow reading of ''securitizer'' supported by commenters is not consistent with Section 15G and could lead to results that would appear contrary to Congressional intent by opening the statute to easy evasion.

A more detailed discussion of the agencies' interpretation of the term ''securitizer,'' including analysis of the statutory text and legislative history can be found in Part III.B.7 of this Supplementary Information.

The agencies have revised the definition of ''eligible ABCP conduit'' in the final rule to accommodate certain business combinations and to clarify the requirements for the types of assets that can be acquired by an eligible ABCP conduit. Other elements of the definition, such as the requirement that an ABCP conduit must be bankruptcy remote or otherwise isolated for

[127] *See infra* footnote 130.

[128] An originator-seller will be subject to the same requirements and have the same benefits under the risk retention rule as any other sponsor that retains risk, including restrictions on transferring or hedging the retained interest to a third party as applied to sponsors. *See* section 5(b)(1) of the final rule (intermediate SPV's originator-seller to retain an economic interest in the credit risk of the securitized assets in the amount and manner required under section 4 or 5 of the rule). For example, an originator-seller retaining risk in its intermediate SPV in the same amount and manner required under section 4 of the rule, as an eligible horizontal residual interest, would be permitted to transfer that interest to a majority-owned affiliate as permitted under section 3 of the rule, subject to the additional restrictions of section 12 of the rule, but an originator-seller retaining risk in its intermediate SPV in the same amount and manner permitted under section 5 of the rule, as a revolving pool securitization seller's interest, could only transfer it to a wholly-owned affiliate, as required by section 5(e)(1) of the rule. *See infra* note 130 for a discussion of the definition of the term ''originator-seller.''

[129] *See* 15 U.S.C. 78o–11(a)(3)(B).

insolvency purposes from the sponsor of the ABCP conduit and from any intermediate SPV, and that an eligible liquidity provider enter into a legally binding commitment to provide 100 percent liquidity coverage to all the ABCP issued by the ABCP conduit remain unchanged from the reproposal.

The final rule definition of eligible ABCP conduit requires that the ABS interests acquired by the ABCP conduit are: (i) ABS interests collateralized solely by assets originated by an originator-seller and by servicing assets; (ii) special units of beneficial interest (or similar ABS interests) in a trust or special purpose vehicle that retains legal title to leased property underlying leases originated by an originator-seller that were transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases and by servicing assets; (iii) ABS interests in a revolving pool securitization collateralized solely by assets originated by an originator-seller and by servicing assets; or (iv) ABS interests that are collateralized, in whole or in part, by assets acquired by an originator-seller in a business combination that qualifies for business combination accounting under GAAP, and, if collateralized in part, the remainder of such assets meet the criteria in items (i) through (iii). The ABS interests must be acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV: (1) Directly from the intermediate SPV, (2) from an underwriter of the ABS interests issued by the intermediate SPV, or (3) from another person who acquired the ABS interests directly from the intermediate SPV. Finally, the rule requires that an eligible ABCP conduit is collateralized solely by ABS interests acquired from intermediate SPVs and servicing assets.

The agencies continue to believe that a limitation on the types of assets that may be acquired by an eligible ABCP conduit is appropriate. Although some commenters suggested eligible ABCP conduits should be permitted to purchase assets directly from originator-sellers under arrangements such as deferred purchase price notes, which commenters argued impose continuing risk of loss on originator-sellers that would be comparable to risk retention, the agencies are not incorporating this approach. The agencies believe such an approach would add complexity to the rule, and that requiring originator-sellers to retain risk in the same way as the rule requires for other securitizers provides investors and regulators with better clarity and transparency as to the nature of the originator-seller's retention of risk in the transaction.

The agencies disagree with commenter assertions that, in the context of ABCP conduits, loans or receivables originated before the applicable effective date of the rule should not be subject to risk retention. Section 15G of the Exchange Act applies to any issuance of asset-backed securities after the effective date of the rules, regardless of the date the assets in the securitization were originated. The agencies note, however, that loans or receivables meeting the seasoned loan exemption in section 19 of the rule would not be subject to risk retention requirements, and an originator-seller that sponsors a securitization of seasoned loans would not need to retain risk with respect to a securitization of such assets under the ABCP option.

With respect to ABS interests, the agencies believe that in certain circumstances described by commenters, acquisition of ABS interests from sources other than an intermediate SPV or originator-seller may be accomplished in a manner consistent with the purposes of section 15G of the Exchange Act. The overview of the final rule discusses two revisions to collateral criteria for eligible ABCP conduits: one that would permit limited transfers between certain ABCP conduits, and another that would permit securitization of assets acquired as the result of certain business combinations.

The agencies are adopting as reproposed the requirements that an ABCP conduit sponsor (i) approve each originator-seller permitted to sell or transfer assets, directly or indirectly, to an intermediate SPV from which an eligible ABCP conduit acquires ABS interests; (ii) approve each intermediate SPV from which an eligible ABCP conduit is permitted to acquire ABS interests; (iii) establish criteria governing the ABS interests, and the assets underlying the ABS interests, acquired by the ABCP conduit; (iv) administer the ABCP conduit by monitoring the ABS interests acquired by the ABCP conduit and the assets supporting those ABS interests, arranging for debt placement, compiling monthly reports, and ensuring compliance with the ABCP conduit documents and with the ABCP conduit's credit and investment policy; and (v) maintain and adhere to policies and procedures for ensuring that the requirements described above have been met.

The final rule retains the concept that a majority-owned affiliate of an originator-seller may contribute assets it originates to the originator-seller's intermediate SPV. To simplify the rule text for most purposes, the final rule consolidates the reproposal's definition of ''majority-owned OS affiliate'' into the definition of originator-seller itself.[130] In response to comments, the agencies seek to clarify that the originator-seller is the sponsor of a securitization transaction in which an intermediate SPV of such-originator-seller issues ABS interests that are acquired by an eligible ABCP conduit, and that the originator-seller may allocate risk retention to its majority owned-affiliates (or wholly-owned affiliates) as permitted in accordance with the sections 3, 4, and 5 of the rule, as applicable. The sponsor of an ABCP conduit must fulfill the compliance requirements of the ABCP option with respect to the originator-seller that is the sponsor of the intermediate SPV.

The agencies have carefully considered commenters' recommendations regarding the definition of 100 percent liquidity coverage and are adopting the rule as proposed. The agencies understand the concern raised by commenters that a significant number of existing partially-supported conduits will likely not be able to use the ABCP option to satisfy the risk retention requirement, because they are covered by a liquidity facility that adjusts the funding obligation of the liquidity provider according to the performance of the assets collateralizing the ABS interests held by the ABCP conduit.[131] However, the agencies observe that a liquidity facility of the type described by commenters, that reduces the obligation of the liquidity provider to provide funding based on a formula that takes into consideration the amount of non-performing assets could serve to insulate the liquidity provider from the credit risk of non-performing assets in the securitization transaction. The ABCP option is designed to accommodate conduits that expose the liquidity provider to the full credit risk of the assets in the securitization, with the expectation that exposure to the credit risk of such assets will provide the liquidity providers with incentive to undertake robust credit underwriting and monitoring.

The final rule adopts as proposed the requirement that a regulated liquidity

[130] In order to provide clarity in maintaining the distinction between originator-sellers and majority-owned originator-seller affiliates, the agencies have included a provision in the definition of ''originator-seller'' indicating that the majority-owned originator-seller affiliate may not be a sponsor of the originator-seller's intermediate SPV.

[131] In response to commenters on the reproposal, the agencies acknowledge that liquidity coverage that does not require the regulated liquidity provider to pay in the event of a bankruptcy of the ABCP conduit would meet the requirements of the ABCP option adopted in the final rule.

provider enter into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or other similar arrangement) to all the ABCP issued by the ABCP conduit by lending to, purchasing ABCP issued by, or purchasing assets from, the ABCP conduit in the event that funds are required to repay maturing ABCP issued by the ABCP conduit.

While the final rule continues to require that there be only one registered liquidity provider with responsibility to make payment in respect of the commercial paper notes, the regulated liquidity provider is not prohibited from hedging its liquidity obligation or from backstopping the obligation by entering into sub-participations or other arrangements in respect of this commitment, so long as one regulated liquidity provider remains directly responsible to all holders of ABCP issued by the conduit. To the extent that the regulated liquidity provider that provides liquidity support to the ABCP conduit is exposed to the credit risk of the assets covered by such liquidity support, the agencies believe the incentives that encourage robust underwriting remain appropriately aligned.

The agencies continue to believe that unfunded risk retention is not consistent with the regulatory goal of meaningful risk retention. As such, the requirement in the ABCP credit risk retention option for 100 percent non-asset tested liquidity is not a substitute for risk retention by the ABCP sponsor, but rather a recognition of an integral part of the overall ABCP conduit securitization structure. As the liquidity support is not an ABS interest retained to satisfy a risk retention requirement under the rule, the liquidity provider is not subject to the prohibitions on transfer and hedging in section 12 of the rule with respect to the liquidity support.

The agencies were persuaded by commenters views regarding the likelihood that many conduits will need to issue ABCP with a longer maturity in the future in order to accommodate the needs of regulated institutions that are subject to new liquidity requirements under the Basel liquidity standards. Accordingly, the final rule extends the nine month maximum maturity and defines ABCP as asset-backed commercial paper that has a maturity at the time of issuance not exceeding 397 days, exclusive of grace periods, or any renewal thereof the maturity of which is likewise limited.

The agencies did not receive any comments regarding the reproposal's definition of ABCP conduit. Accordingly, as with the reproposal, the final rule defines an ABCP conduit as an issuing entity with respect to ABCP.

In response to comments, the final rule permits eligible ABCP conduits to acquire ABS interests from other eligible ABCP conduits with the same regulated liquidity provider. Under the final rule, an eligible ABCP conduit may acquire an ABS interest from another eligible ABCP conduit if: (i) The sponsors of both eligible ABCP conduits are in compliance with section 6 of the rule; and (ii) the same regulated liquidity provider has entered into one or more legally binding commitments to provide 100 percent liquidity coverage to all of the ABCP issued by both eligible ABCP conduits.

However, because the agencies continue to be concerned about asset aggregators that acquire loans and receivables from multiple sources in the market, place them in an intermediate SPV, and issue interests to ABCP conduits the agencies have declined to extend the ABCP option to ABCP conduits that purchase ABS interests other than in an initial issuance by or on behalf of an originator-seller's intermediate SPV.

In order to accommodate certain market practices, as referred to in the comments to the reproposal, the agencies are revising the definition of ''intermediate SPV'' in the final rule. The final rule revises this provision to include a special purpose vehicle, often referred to as an ''orphan SPV,'' that has nominal equity owned by a trust or corporate service provider that specializes in providing independent ownership of special purpose vehicles, and such trust or corporate service provider is not affiliated with any other transaction parties. For purposes of the final rule, ''owned by a trust'' includes ''held by a trustee in trust'' and ''issued to a trustee.'' In addition, the corporate service provider will not be affiliated solely because it provides professional directors or administrative services to the orphan SPV or the trust. Finally, the nominal equity in the orphan SPV will not be entitled to a share of the profits and losses or any other economic indicia of ownership.

Consistent with the reproposal, the final rule allows an intermediate SPV to sell ABS interests that it issues to third parties other than ABCP conduits. However, the agencies emphasize that, except as otherwise provided for loans or receivables acquired as part of certain business combinations, the ABS interests acquired by the conduit cannot not be collateralized by securitized assets otherwise purchased or acquired by the intermediate SPV's originator-seller, the originator-seller's majority-owned affiliates, or by the intermediate SPV from unaffiliated originators or sellers. Commenters requested the addition of a cure period, expressing concern as to whether a conduit would be considered to be in violation of the rule any time one of its originator-sellers failed to comply, and the agencies have addressed this issue. The final rule includes the reproposal's provisions obligating the sponsor to monitor originator-sellers' compliance, notify investors of any failure of compliance by an originator-seller, and take appropriate steps to cure the breach. A sponsor of an eligible ABCP conduit that notifies investors and takes appropriate steps in accordance with the terms of the rule will be in compliance with its obligations under the rule, and, accordingly, no ''cure period'' is necessary. Although commenters objected to the requirement to identify originator-sellers by name in these circumstances, the agencies believe it is an important part of incentivizing the originator-seller and ABCP conduit sponsor to comply with the requirements of the ABCP option.

The final rule requires an ABCP conduit sponsor to provide, or cause to be provided, certain disclosures to ABCP investors. In response to commenters' concerns, the disclosure requirement requires that the information about the underlying ABS interests be updated at least monthly, rather than updated in connection with each issuance of ABCP. The final rule requires that disclosures be provided before or contemporaneously with the first sale of ABCP to the investor and must be provided on at least a monthly basis to all conduit investors. In order to implement this requirement, the agencies have required that the disclosures to investors must be based on information as of a date not more than 60 days prior to the date of first use with investors in order to accommodate variations in reporting timelines and incorporation of information received from originator-sellers.

The agencies are persuaded by commenters who expressed concern that the reproposal's disclosure requirements for the details of each originator-seller's risk retention interest, together with the same information as the originator-seller would be required to provide direct investors pursuant to the rule, provides more information than necessary. Accordingly, the final rule revises this disclosure to simplify it significantly. The disclosure must contain the following information as of a date not more than 60 days prior to the date of first use with investors:

(i) The name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund;

(ii) The asset class or brief description of the underlying securitized assets;

(iii) The standard industrial category code (SIC Code) for the originator-seller that will retain (or has retained) pursuant to this section an interest in the securitization transaction; and

(iv) A description of the percentage amount of risk retention by the originator-seller, and whether it is in the form of an eligible horizontal residual interest, vertical interest, or revolving pool securitization seller's interest, as applicable, pursuant to the rule.

The final rule also requires that an ABCP sponsor provide, or cause to be provided, upon request, to the Commission and its appropriate Federal banking agency, if any, in writing, all of the information required to be provided to investors, and the name and form of organization of each originator-seller that will retain (or has retained) a rule-compliant interest in the securitization transaction. As investors in ABCP initially will have significantly less information about the risk retention held by the originator-sellers that sponsor ABS interests collateralizing the ABCP than investors in other forms of ABS interests, the requirement that sponsors disclose a breach by an originator-seller will provide them with relevant information about the originator-seller upon the occurrence of a breach.

5. Commercial Mortgage-Backed Securities

a. Overview of the Reproposal and Public Comments

Section 15G(c)(1)(E) of the Exchange Act [132] provides that, with respect to CMBS, the regulations prescribed by the agencies may provide for retention of the first-loss position by a third-party purchaser that specifically negotiates for the purchase of such first-loss position, holds adequate financial resources to back losses, provides due diligence on all individual assets in the pool before the issuance of the asset-backed securities, and meets the same standards for risk retention as the Federal banking agencies and the Commission require of the securitizer. In light of this provision and the historical market practice of third-party purchasers acquiring first-loss positions in CMBS transactions, the agencies proposed to permit a sponsor of ABS interests that is collateralized by commercial real estate loans to meet its risk retention requirements if third-party purchasers acquired eligible horizontal residual interests in the issuing entity.[133] The reproposal would have permitted one or two third-party purchasers to satisfy the risk retention requirement, so long as their eligible horizontal residual interests were *pari passu* with each other, so that neither third-party purchaser's losses were subordinate to the other's losses. The eligible horizontal residual interest held by the third-party purchasers would have been permitted to be used to satisfy the risk retention requirements either by itself as the sole credit risk retained, or in combination with a vertical interest held by the sponsor.

The CMBS risk retention option in the reproposal would have been available only for securitization transactions collateralized solely by commercial real estate loans and servicing assets. In addition, the following eight requirements would have been required to be met:

(1) Each third-party purchaser retains an eligible horizontal residual interest in the securitization in the same form, amount, and manner as would have been required of the sponsor under the horizontal risk retention option;

(2) Each third-party purchaser pays for the first-loss subordinated interest in cash at the closing of the securitization;

(3) No third-party purchaser obtains financing, directly or indirectly, from any other person party to the securitization transaction (including, but not limited to, the sponsor, depositor, or an unaffiliated servicer), other than a person that is a party solely by reason of being an investor;

(4) Each third-party purchaser performs a review of the credit risk of each asset in the pool prior to the sale of the asset-backed securities;

(5) Except for an affiliation with the special servicer in the securitization transaction or an originator of less than 10 percent of the unpaid principal balance of the securitized assets, no third-party purchaser can be affiliated with any other party to the securitization transaction (other than investors);

(6) The transaction documents provide for the appointment of an operating advisor (Operating Advisor), subject to certain terms and conditions;

(7) The sponsor provides, or causes to be provided, to potential purchasers certain information concerning the third-party purchasers and other information concerning the transaction; and

(8) Any third-party purchaser acquiring an eligible horizontal residual interest under the CMBS option complies with the hedging, transfer and other restrictions applicable to such interest under the reproposed rule as if such third-party purchaser was a sponsor who had acquired the interest under the horizontal risk retention option.

Generally, commenters supported the CMBS risk retention option described in the reproposal. One commenter cautioned against further modifications to the proposed CMBS option, expressing its view that CMBS underwriting standards were beginning to deteriorate.

Another commenter, however, pointed out that risk retention is better implemented where the sponsor retains some ''skin in the game.'' This commenter suggested that the rule require the sharing of risk retention between the sponsor and the third-party purchasers. This commenter suggested that third-party purchasers not be allowed to hold more than 2.5 percent of the risk retention requirements, and that they be required to hold the first-loss position for more than 5 years before being allowed to transfer the position even to another qualified third-party purchaser (barring an earlier sunset). Another commenter requested clarification as to whether multiple sponsors can divide a vertical interest among themselves, on a pro rata basis, based on their contribution to the transaction, with no minimum retention for any one sponsor. Another commenter requested clarification as to whether a sponsor holding an eligible vertical interest in a CMBS transaction would need to retain a portion of the eligible horizontal residual interest as part of that vertical interest, expressing the preference of its CMBS sponsor members that the eligible horizontal residual interest not be included as part of the eligible vertical interest.

After considering these comments, the agencies do not believe it is necessary to require that the sponsor retain or share with third-party purchasers the credit risk in CMBS transactions because third-party purchasers, under the framework of the final rule, must hold the risk and independently review each securitized asset. The agencies observe that under the final rule, the

[132] 15 U.S.C. 78o–11(c)(1)(E).

[133] Such third-party purchasers are commonly referred to in the CMBS market as ''B-piece buyers'' and the eligible horizontal residual interest is commonly referred to as the ''B-piece.''

sponsor remains responsible for compliance with the CMBS option and risk retention and must monitor a third-party purchaser's compliance with the CMBS option.[134] The agencies also do not believe it is necessary to limit the amount of risk retention held by the third-party purchaser in an L-shaped structure. This approach provides parties to CMBS transactions with flexibility to choose how to structure their retention of credit risk in a manner compatible with the practices of the CMBS market. Further, consistent with the reproposal, the agencies continue to believe that the interests of the third-party purchaser and other investors are aligned through other provisions of the proposed CMBS option, such as the Operating Advisor provisions and the sponsor's disclosure requirements discussed below. The agencies also do not believe it is necessary to extend the five-year holding period after which the third-party purchaser may transfer the eligible horizontal residual interest to another third-party purchaser. As stated in the reproposal, the agencies selected five years as a holding period that was sufficiently long to enable underwriting defects to manifest themselves. The agencies did not receive sufficient data or information demonstrating that a longer holding period was warranted.

Additionally, the agencies have determined that it would unduly dilute the credit risk being retained in the CMBS transaction if multiple sponsors were allowed to divide the vertical interest. Consistent with the standard risk retention option generally where multiple sponsors are not permitted to divide the requisite 5 percent credit retention among themselves, in a CMBS transaction with multiple sponsors, if any portion of the required 5 percent retention is to be held by a sponsor (*i.e.,* if any portion of the eligible horizontal residual interest is not sold to a qualified third-party purchaser or an eligible vertical interest is being used to meet the 5 percent retention requirement), that portion of the 5 percent required retention must be held by a single sponsor (and its majority-owned affiliates).

As the agencies stated in the reproposal, the eligible horizontal residual interest held by the third-party purchasers can be used to satisfy the risk retention requirements in combination with a vertical interest held by a sponsor. Consistent with this approach, where the eligible horizontal residual interest is held by a third-party purchaser, and the sponsor holds a vertical interest, the sponsor must, as part of that vertical interest, also retain a portion of the eligible horizontal residual interest, as the vertical interest must constitute 5 percent of the cash flows of each tranche, including the eligible horizontal residual interest.[135]

The agencies also received many comments with respect to the more specific aspects of the CMBS option in the reproposal. These comments and the final rule for these aspects of the CMBS option are discussed below.

b. Third-Party Purchasers

i. Number of Third-Party Purchasers and Retention of Eligible Horizontal Residual Interest

While commenters generally supported allowing up to two third-party purchasers to hold risk retention, one commenter recommended expanding the number of third-party purchasers to allow participation by more than two B-piece investors.

Several commenters recommended allowing the third-party purchasers to hold the interests in a senior-subordinated structure, rather than *pari passu,* provided that the holder of the subordinated interest retains at least half of the requisite eligible horizontal residual interest, and that both third-party purchasers independently satisfy all of the requirements and obligations imposed on third-party purchasers. These commenters suggested that a senior-subordinated structure would better allow the market to appropriately and efficiently price the interests in a manner that is commensurate with the risk of loss of each interest, and to address the different risk tolerance levels of each third-party purchaser. One of these commenters asserted that the *pari passu* requirement would reduce the capacity of third-party purchasers to invest in the eligible horizontal residual interest. However, two commenters strongly opposed allowing third-party purchasers to satisfy the risk retention requirements through a senior-subordinated structure, commenting that such a change would significantly dilute and render ineffective the risk retention requirements.

As stated in the reproposal, the agencies provided additional flexibility for the CMBS option by allowing up to two third-party purchasers to satisfy the risk retention requirement. The agencies do not believe it would be appropriate to allow more than two third-party purchasers in a single transaction, because it could dilute the incentives generated by the risk retention requirement to monitor the credit quality of the commercial mortgages in the pool. Similarly, the agencies agree that allowing the third-party purchasers to satisfy the risk retention requirement through a senior-subordinated structure would significantly dilute the effectiveness of the risk retention requirements. Accordingly, the agencies therefore are adopting as proposed the *pari passu* requirement with respect to the retained interests held by third-party purchasers in a CMBS transaction.

ii. Third-Party Purchaser Qualifying Criteria

The agencies did not propose any qualifying criteria for third-party purchasers in the original proposal or the reproposal.

In response, one commenter requested that third-party purchasers be ''qualified'' based on predetermined criteria of experience, financial analysis capability, capability to direct the special servicer, and capability to sustain losses. Another commenter requested that if a third-party purchaser's affiliate contributes more than 10 percent of the securitized assets to a CMBS transaction, that third-party purchaser should be precluded from holding the eligible horizontal residual interest.

Another commenter stated its belief that it is common for several funds within a fund complex that are managed by the same or affiliated investment adviser to purchase eligible horizontal residual interests in the same CMBS transaction and, to be consistent with practice, the definition of third-party purchaser should be expanded to include multiple funds that are managed by the same or affiliated investment advisers.

Consistent with the reproposal, the agencies are not adopting specific qualifying criteria for third-party purchasers. The agencies believe that investors in the business of purchasing first-loss positions or ''B-piece'' interests in CMBS transactions have the requisite experience and capabilities to make an informed decision regarding their purchases. B-piece interests are not offered or sold through registered offerings—typically a B-piece interest will be sold in reliance on Securities Act Rule 144A, which requires purchasers to be qualified institutional buyers. The agencies observed that B-piece CMBS investors are typically real estate specialists who use their knowledge about the underlying assets and mortgages in the pools to conduct

[134] See section 7(c) of the final rule.

[135] If there is no third-party purchaser and the sponsor holds all of the required retention in the form of a vertical interest, the sponsor must hold 5 percent of each tranche including the most subordinated tranche in the structure.

extensive due diligence on new deals. The agencies also observed that the B-piece market has very few participants. According to Commercial Mortgage Alert data, in 2009–2013, there were 38 different B-piece buyers with nine of them participating in 70 percent of CMBS deals. Furthermore, as discussed below, the agencies believe that the reproposed rule's disclosure requirements with respect to the identity and CMBS investment experience of third-party purchasers are sufficient to allow investors in a CMBS transaction to assess the investment experience and other qualifications of third-party purchasers and other material information necessary to make an informed investment decision. If, in the future, the agencies observe adverse changes in the experience and capabilities of third-party purchasers in CMBS transactions, the agencies may consider whether modifications to the rule should be made to address these issues.

Also consistent with the reproposal, the final rule retains the requirement that third-party purchasers be independent from originators of more than 10 percent of the securitized assets. The agencies believe that the independence requirement will help ensure a new review by the third-party purchaser of the underwriting of the securitized loans and do not believe that the requirement will adversely affect the number of third-party purchasers willing to assume the risk retention obligations in CMBS transactions. Last, the agencies are not expanding the definition of third-party purchaser to include multiple funds that are managed by the same or affiliated investment adviser. The agencies introduced the concept of a ''majority-owned affiliate'' in the reproposal, which would permit risk retention to be retained by a third-party purchaser or its majority-owned affiliate. The final rule retains the reproposal's provisions allowing sponsors and third-party purchasers to transfer retained risk to their majority-owned affiliates. The final rule does not allow sponsors or third-party purchasers to transfer retained risk to parties other than majority-owned affiliates, as the agencies believe the rule being adopted today already includes flexibility with respect to risk retention held by an entity that is a majority-owned affiliate of a third-party purchaser, and that further expansion of the definition of third-party purchaser is not necessary and would dilute the risk required to be retained by a sponsor or third-party purchaser.

c. Operating Advisor

i. Applicability of the Operating Advisor Requirement

The reproposal included a requirement that all CMBS transactions that use the third-party purchaser option to satisfy the risk retention requirement must appoint an Operating Advisor that is not affiliated with other parties to the securitization transaction. The reproposal would have prohibited the Operating Advisor from having, directly or indirectly, any financial interest in the securitization transaction, other than fees from its role as Operating Advisor, and would have required the Operating Advisor to act in the best interest of, and for the benefit of, investors as a collective whole.

Multiple commenters expressed support for the Operating Advisor requirement, noting that it was a helpful governance mechanism and reflective of current market practice. One of these commenters advocated expanding the Operating Advisor requirement to all CMBS transactions, and not simply those relying on the CMBS option. Another commenter recommended that the Operating Advisor be prohibited from having any direct or indirect financial interest in, or financial relationship with, the special servicer.

After considering the comments received, the agencies have decided not to expand the Operating Advisor requirement to CMBS transactions that do not rely on the third-party purchaser CMBS option. As stated in the reproposal, the agencies believe that there is generally a strong connection between third-party purchasers and the special exercise of the servicing rights in CMBS transactions. In CMBS transactions where credit risk is being retained by a third-party purchaser, the agencies believe there is a particular need to provide a check on third-party purchasers by limiting their ability to manipulate cash flows through the exercise of the special servicing rights. The agencies are providing this check by requiring an Operating Advisor in CMBS transaction where the third-party purchaser is holding the risk retention. The agencies note that the requirement that there be an Operating Advisor for any transaction relying on the CMBS option means that the Operating Advisor must be in place at any time that a third-party purchaser holds any portion of the required risk retention. Accordingly, whether the B-piece is initially sold to a third-party purchaser or sold to a third-party purchaser after the initial five year holding period expires, the transaction must have an Operating Advisor in place at all times that a third-party purchaser holds any portion of the required risk retention.

Consistent with the reproposal, the agencies are adopting the requirement that the Operating Advisor be a party that is not affiliated with other parties to the securitization transaction, and does not have, directly or indirectly, any financial interest in the securitization transaction other than fees from its role as Operating Advisor. The agencies continue to believe that this requirement sufficiently establishes the independence of the Operating Advisor and protects investors' interests.

ii. Qualifications of the Operating Advisor

The agencies included in the reproposal certain general qualifications for the Operating Advisor. The reproposal would have required underlying transaction documents in a CMBS transaction to provide standards with respect to the Operating Advisor's experience, expertise and financial strength to fulfill its duties and obligations under the applicable transaction documents over the life of the securitization transaction.

One commenter cautioned against the requirement that qualification standards for the Operating Advisor be specified in the transaction documents. This commenter asserted that the requirements must ensure that a sufficient number of qualified and independent Operating Advisors will be available to fill the role. Additionally, this commenter encouraged the agencies to clarify the mechanism by which the acceptability of the Operating Advisor may be determined.

The agencies do not believe that the rule should mandate the mechanism by which the acceptability of the Operating Advisor is determined, but that the CMBS transaction parties should have the flexibility to establish the appropriate standards for the Operating Advisor in each transaction. As a result, the agencies are adopting the qualification requirements as proposed.

iii. Role of the Operating Advisor

Under the reproposal, once the eligible horizontal residual interest held by third-party purchasers reaches a principal balance of 25 percent or less of its initial principal balance, the special servicers would have been required to consult with the independent Operating Advisor in connection with, and prior to, any major investing decisions related to the servicing of the securitized assets. The reproposal would have required that the Operating Advisor be provided with adequate and timely access to information and reports necessary to fulfill its duties under the transaction documents. It also would have required that the Operating Advisor be responsible for reviewing the actions of the special servicer, reviewing all reports made by the special servicer to the issuing entity, reviewing for accuracy and consistency in calculations made by the special servicer in accordance with the transaction documents, and issuing a report to investors and the issuing entity on the special servicer's performance.

One commenter supported this requirement, but requested that the agencies clarify the scope of the decisions on which the special servicer was to consult with the Operating Advisor's review, and the scope of the reports to be provided to the Operating Advisor. Several commenters requested that the agencies clarify that the calculation of the principal balance could take into account appraisal reductions and realized losses, in order to be consistent with current market practice. Another commenter questioned the usefulness of the consultation requirement, noting that there is no meaningful connection between the 25 percent threshold and the goal of risk retention. This commenter proposed either eliminating this requirement or limiting the consultation right to the period from the closing of the transaction until the holder of risk retention loses control over the special servicing rights. Another commenter believed that the 25 percent threshold should be reduced to 10 percent.

After considering the comments received, the agencies are adopting the proposed consultation requirement, with some modifications in response to comments. For purposes of determining the principal balance, the agencies are clarifying in the final rule that the calculation should be performed in a manner that is consistent with the calculation as permitted under the transaction documents, and take into account any realized losses and appraisal reduction amounts to the extent permitted under the terms and conditions of the transaction documents. In terms of the scope of reports made by the special servicer to the issuing entity that the Operating Advisor must review, the agencies are clarifying in the final rule that the Operating Advisor shall have adequate and timely access to all reports delivered to all classes of bondholders as well as the holders of the eligible horizontal residual interest. Finally, the agencies believe that section 7(b)(6)(iv) of the final rule sufficiently describes the types of decisions that are subject to consultation—specifically, any material decision in connection with the servicing of the securitized assets which includes, without limitation, any material modification or waiver of any provision of a loan agreement, any foreclosure or similar conversion of the ownership of a property, or any acquisition of a property.

iv. Special Servicer Removal Provisions

The reproposal would have required that the Operating Advisor have the authority to recommend the removal and replacement of the special servicer. Under the reproposal, the removal of the special servicer would have required the affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, and required a quorum of 5 percent of the outstanding principal balance of all ABS interests.

The agencies received many comments with respect to the Operating Advisor's ability to remove the special servicer. Commenters generally supported retaining the Operating Advisor's ability to recommend the replacement of the special servicer, especially when the special servicer had not acted in the best interest of all investors. However, commenters differed on their views of the appropriate voting quorum requirements.

One commenter believed that the special servicer removal provisions should mirror current CMBS transactions, which typically provide that (i) the Operating Advisor may recommend to remove the special servicer only after the most senior tranche of the B-piece has been reduced to less than 25 percent of its initial principal balance, and (ii) removal can only take place if more than 50 percent of the aggregate outstanding principal balance of all classes affirmatively vote for such removal.

One commenter recommended providing Operating Advisors with a safe harbor from liability, except in the case of gross negligence, fraud or willful misconduct, for recommending replacement of the special servicer. This commenter also recommended requiring the maintenance of an investor registry, so that investors can be easily contacted if the Operating Advisor makes a replacement recommendation that requires a vote.

Commenters submitted a wide range of comments on the quorum requirement for removal of the special servicer. Two commenters asserted that the quorum requirement would be more appropriately specified by the underlying transaction documents, rather than in the final rule, in order to accommodate any future changes in the market. One commenter favored a requirement that in order to reach a quorum, no fewer than three unaffiliated investors participate in the vote. Another commenter recommended two options: (i) Increasing the quorum to 15 percent and requiring the participation of three unaffiliated investors, or (ii) increasing the quorum to 20 percent with no minimum unaffiliated investor-voting requirement. This commenter opposed a more substantive increase to the quorum requirement, asserting that it would be nearly impossible for interest holders to remove the special servicer. Both of these commenters recommended adding a provision that specified that the third-party purchaser may not unilaterally re-appoint the original special servicer or its affiliate following a removal and replacement process.

One commenter highlighted a split in views among those parties who contributed to its comments. Some favored increasing the voting quorum requirement to two-thirds of all investors eligible to vote (before the eligible horizontal residual interest has been reduced below 25 percent), and to one-third of all investors eligible to vote (after the eligible horizontal residual interest has been reduced below 25 percent). Others supported a quorum requirement of at least 20 percent, with at least three independent investors participating in the vote.

After considering the comments received, the agencies have decided to permit CMBS transaction parties to specify in the underlying transaction documents the quorum required for a vote to remove the special servicer. However, the transaction documents may not specify a quorum of more than the holders of 20 percent of the outstanding principal balance of all ABS interests in the issuing entity, with such quorum including at least three ABS interest holders that are not affiliated with each other. The agencies believe that this balanced approach provides CMBS transaction parties with the flexibility to establish the quorum required to remove the special servicer in the applicable transaction documents, as is commonly done, while addressing commenter concerns that a quorum requirement of more than 20 percent may make is difficult for interest holders to remove the special servicer.

The agencies do not believe that it would be appropriate to include a safe harbor for the Operating Advisor or a requirement that there be an investor registry requirement in the final rule since the agencies believe the Operating Advisor's indemnification rights and the trustee's investor communication provisions should be set forth in, and governed by, the transaction documents.

Finally, the agencies agree with comments requesting that the third-party purchaser should not have the unilateral ability to reappoint the original special servicer or its affiliate. The rule requires the replacement of the special servicer following the recommendation of the Operating Advisor and an affirmative vote of the requisite number of ABS holders. The agencies believe that the independence of the Operating Advisor as otherwise required by the final rule sufficiently ensures that the recommendation of the replacement special servicer will be made independent of third-party purchasers, and that the voting and enhanced quorum requirements being adopted today provide additional assurance in this regard. The quorum and voting requirements effectively require that the third-party purchasers not have the unilateral ability to re-appoint the original special servicer or its affiliate.

d. Disclosures

The reproposal would have required the sponsor to provide, or cause to be provided, to potential purchasers and federal regulators certain information concerning the third-party purchasers and other information concerning the CMBS transaction, such as each third-party purchaser's name and form of organization, experience investing in CMBS, and any other information about the third-party purchaser deemed material to investors in light of the particular securitization transaction.

Additionally, it would have required a sponsor to disclose to investors the amount of the eligible horizontal residual interest that each third-party purchaser will retain (or has retained) in the transaction (expressed as a percentage of the fair value of all ABS interests issued in the securitization transaction and the dollar amount of the fair value of such ABS interests); the purchase price paid for such interest; the material terms of such interest; the amount of the interest that the sponsor would have been required to retain if the sponsor had retained an interest in the transaction; the material assumptions and methodology used in determining the aggregate amount of ABS interests of the issuing entity; the representations and warranties concerning the securitized assets; a schedule of exceptions to these representations and warranties; and information about the factors that were used to make the determination that such exceptions should be included in the pool even though they did not meet the representations and warranties.

In addition, the reproposal would have required that certain material information with respect to the Operating Advisor be disclosed in the applicable transaction documents, including, without limitation, the name and form of organization of the Operating Advisor, the qualification standards applicable to the Operating Advisor, how the Operating Advisor satisfies these qualification standards, and the terms of the Operating Advisor's compensation.

The reproposal also would have required the sponsor to maintain and adhere to policies and procedures to actively monitor the third-party purchaser's compliance with the CMBS option, and to notify investors if the sponsor learns that a third-party purchaser no longer complies with such requirements.

The agencies received a few comments regarding the disclosure requirements under the CMBS risk retention option. Two commenters opposed the disclosure of the purchase price paid by third-party purchasers for the eligible horizontal residual interest. These commenters pointed out that such information has traditionally been viewed by all market participants as highly confidential and proprietary, and that the disclosure requirement would deter B-piece buyers from retaining risk. One of these commenters suggested that the issuer or third-party purchaser could instead provide the purchase price to the appropriate regulatory agency on a confidential basis, or disclose only that it has fulfilled the risk retention requirement.

The investment grade investor members of an industry association requested that two additional disclosures be required with respect to the Operating Advisor: (1) Any material conflict of interest or potential conflict of interest of the Operating Advisor; and (2) additional information regarding the formula for calculating the Operating Advisor's compensation.

The agencies are adopting the disclosure requirements for the CMBS option, with some modifications in response to comments. As stated in the reproposal, the agencies believe that the importance of the disclosures to investors with respect to third-party purchasers outweighs potential issues associated with the sponsor or third-party purchaser making such information available. The agencies believe that the disclosure requirements with respect to the identity and experience of third-party purchasers in the CMBS transaction that are being adopted today will alert investors in the transaction as to the experience of third-party purchasers and other material information necessary to make an informed investment decision. In this regard, the rule retains the requirement that the price at which the B-piece is sold be disclosed. Disclosure of the price of the B-piece is consistent with other fair value disclosures. The agencies believe these disclosures are necessary to allow other investors to assess the risk being retained, and that the ability of investors to assess the value of the retained risk outweighs the preferences of some B-piece buyers to keep the price confidential.

With respect to requests that the rule require the disclosure of the method of calculating the Operating Advisor's compensation, the agencies believe the requirement to disclose the terms of the Operating Advisor's compensation already encompasses disclosure as to how such compensation is calculated. Therefore, the agencies believe that no change to the reproposed rule is required in this respect.

With respect to the request that the rule require disclosure of any material conflicts of interest involving the Operating Advisor, the agencies agree that disclosure of any material or potential material conflicts of interest of the Operating Advisor with respect to the securitization transaction should be disclosed. Such disclosure will allow transaction parties to better ensure that the Operating Advisor will act independently. Accordingly, the agencies have added this disclosure requirement to the final rule.

e. Transfer of B-Piece

As discussed above, consistent with the reproposal, the rule allows a sponsor of a CMBS transaction to meet its risk retention requirement where a third-party purchaser acquires the B-piece, and all other criteria and conditions for this CMBS option as described are met.

The reproposal would have permitted, as an exception to the transfer and hedging restrictions in that reproposed rule and section 15G of the Exchange Act, the transfer of the retained interest by any initial third-party purchaser to another third-party purchaser at any time after five years after the date of the closing of the securitization transaction, provided that the transferee satisfies each of the conditions applicable to the initial third-party purchaser under the CMBS option in connection with such purchase. Conditions that an initial third-party purchaser was required to satisfy at or prior to the closing of the securitization transaction would be required to be satisfied by the transferee at or prior to the time of the transfer to the transferee. The reproposed rule also would have permitted transfers by any such subsequent third-party purchaser to any other purchaser satisfying the criteria applicable to initial third-party purchasers. In addition, if the sponsor retained the B-piece at closing, the reproposed rule would have permitted the sponsor to transfer such interest to a purchaser satisfying the criteria applicable to subsequent third-party purchasers after a five-year period following the closing of the securitization transaction has expired. The reproposed rule also would have required that any transferring third-party purchaser provide the sponsor with complete identifying information as to the transferee third-party purchaser.

Comments on the proposed rule included objections that the five-year holding period was too long and that a sponsor that retained the B-piece at closing should not be required to hold the position for five years before transfer to a qualifying third-party purchaser. Concern was also expressed that imposing the five-year holding period, in tandem with the limitation that there can be no more than two third parties sharing the B-piece on a *pari passu* basis only, could decrease the liquidity of the B-piece and, therefore, disrupt the CMBS market.

Many commenters stated that the five-year transfer restriction period should be reduced, because it would significantly impair the liquidity of CMBS and render the B-piece interests much less desirable. However, these commenters differed on their suggested alternative approaches. One commenter recommended a tiered approach by requiring a third-party purchaser to retain its interest for one year, allowing such third-party purchaser to transfer its interest to a ''qualified transferee'' who meets the same criteria as the third-party purchaser for the following four years, and having no transfer or hedging restrictions after that time. Another commenter asserted that there should be no minimum holding requirement as long as the third-party purchaser transfers the interest to a subsequent third-party purchaser meeting the same qualification requirements as the initial third-party purchaser. Another commenter recommended reducing the transfer restriction period to three years because performance and other pool data are readily available from multiple sources, and investors would have the opportunity to determine loan performance and to identify loans that are not performing as expected.

One commenter suggested reducing the 5 percent risk retention requirement if a five-year holding period is imposed, or allowing the third-party purchaser to transfer to a qualified transferee who meets the same criteria as the third-party purchaser, a qualified institutional buyer under Rule 144A under the Securities Act, or an institutional accredited investor under Rule 501 under the Securities Act. Another commenter recommended allowing sponsors to transfer the retained interest to a qualified third-party purchaser within 90 days after the date of closing of the transaction. One commenter also pointed out the five-year period applicable to holders of eligible horizontal residual interests and contained in section 7 of the reproposal is inconsistent with, and suggested that it be harmonized with, the general transfer restriction period that is contained in section 12 of the reproposal [136] and that it should apply to vertical risk retention in a CMBS transaction, and that both holding periods should be reduced to three years. Several commenters suggested that, if a sponsor holds the B-piece, it should not be subject to the five-year holding period or should be allowed to transfer the B-piece within some short period after the transaction closing. One commenter requested that the final rule state that a sponsor's risk retention obligation be terminated with respect to a CMBS transaction once all of the loans have been defeased.

The final rule, as it relates to the rights to transfer the B-piece, is substantially the same as the reproposal, in which the agencies attempted to balance two overriding goals: (1) Not disrupting the existing CMBS third-party purchaser structure and (2) ensuring that risk retention promotes good underwriting. In formulating the reproposal, the agencies reasoned that, after a five-year period, the quality of the underwriting would be sufficiently evident that the initial third-party purchaser or, if there was no initial third-party purchaser, the sponsor, would suffer the consequences of poor underwriting in the form of a reduced sales price for such interest. The agencies also believe that the initial holder of the B-piece, whether a third-party purchaser or the sponsor, would need to assume that holding the B-piece for a five-year period would result in such holder bearing the consequences of poor underwriting. Thus, by permitting transfer after the five year-period, the agencies do not believe that they are creating a structure which would result in the initial holder being less demanding of the underwriting than if it was required to retain the B-piece until expiration of the full sunset period applicable to CMBS securitizations. In connection with this, the agencies view the requirement (among other conditions) that a subsequent purchaser, like the initial third-party purchaser, conduct an independent review of the credit risk of each securitized asset to be important, as this requirement will emphasize to the initial B-piece holder that the performance of the securitized assets will be scrutinized by any potential purchaser, thus exposing the initial purchaser to the full risks of poor underwriting.

The only change in the final rule from the reproposal is that it allows the risk retention obligation to terminate once all of the loans in a CMBS transaction are fully defeased. A loan is deemed to be defeased if cash or cash equivalents have been pledged to the issuing entity as collateral for the loan and are in such amounts and payable at such times as necessary to timely generate cash sufficient to make all remaining debt service payments due on such loan and the issuing entity has an obligation to release its lien on the loan. Once the collateral securing a loan is replaced with cash or cash equivalent instruments in the full amount remaining due on the loan, thereby defeasing the loan, any risk associated with poor underwriting is eliminated and there is no need to require risk retention to continue to be held.

The standards for the agencies to provide exemptions to the risk requirements and prohibition on hedging are outlined in section 15G. The exemption allowing for a transfer of the B-piece by one qualified third-party purchaser to another qualified third-party purchaser after five years meets these requirements. The agencies decided that unless there was a holding period that was sufficiently long enough to enable underwriting defects to manifest themselves, the original third-party purchaser might not be incentivized to insist on effective

[136] Section 12(f)(1) of the reproposal sets forth the hedging and transfer restriction period that would be generally applicable to risk retention, which is the latest of (i) the date on which the total unpaid principal balance of the securitized assets that collateralize the securitization transaction has been reduced to 33 percent of the total unpaid principal balance of the securitized assets as of the closing of the securitization transaction; (ii) the date on which the total unpaid principal obligations under the ABS interests issued in the securitization transaction has been reduced to 33 percent of the total unpaid principal obligations of the ABS interests at closing of the securitization transaction; or (iii) two years after the date of the closing of the securitization transaction.

underwriting of the securitized assets. The agencies believe that under 15 U.S.C. 78o–11(e)(2), a five-year retention duration helps ensure high-quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization by forcing sponsors or initial third-party purchasers to bear the risk of losses related to underwriting deficiencies. Furthermore, the agencies believe that this exemption meets the statute's requirement that the exemption encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise is in the public interest and for the protection of investors. The approach of requiring the third-party purchaser to hold for at least five years accommodates continuing participation of B-piece buyers in the market, in a way that requires meaningful risk retention as an incentive to good risk management practices by securitizers in selecting assets and addresses specific concerns about maintaining consumers' and businesses' access to commercial mortgage credit.[137]

6. Government-Sponsored Enterprises

a. Overview of the Reproposal and Public Comment

The reproposal provided in section 8 that the full guarantee (for timely payment of principal and interest) by the Enterprises while they operate under the conservatorship or receivership of FHFA with capital support from the United States would have satisfied the risk retention requirements of section 15G of the Exchange Act with respect to the mortgage-backed securities issued by the Enterprises. Similarly, an equivalent guarantee provided by a limited-life regulated entity that succeeds to the charter of an Enterprise, and that is operating under the authority and oversight of FHFA under section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, would have satisfied the risk retention requirements, provided that the entity is operating with capital support from the United States. The reproposal also provided that the hedging and finance provisions would not have applied to an Enterprise while operating under conservatorship or receivership with capital support from the United States, or to a limited-life regulated entity that succeeded to the charter of an Enterprise and is operating under the authority and oversight of FHFA with capital support from the United States. Under the reproposal, a sponsor (that is, an Enterprise) utilizing this option would have been required to provide to investors, in written form under the caption ''Credit Risk Retention'' and, upon request, to FHFA and the Commission, a description of the manner in which it met the credit risk retention requirements.

As the agencies emphasized, if either an Enterprise or a successor limited-life regulated entity began to operate other than as described, the Enterprise or successor entity would no longer be able to avail itself of the credit risk retention option provided by section 8 of the reproposal and would have become subject to the related requirements and prohibitions set forth elsewhere in the reproposal. The reproposal did not alter the approach to the risk retention requirements for the Enterprises in the original proposal.

In explaining their reasons for this approach, the agencies observed that because the Enterprises fully guarantee the timely payment of principal and interest on the mortgage-backed securities they issue, the Enterprises were exposed to the entire credit risk of the mortgages that collateralize those securities.[138] The agencies also highlighted that the Enterprises had been operating under the conservatorship of FHFA since September 6, 2008, and that as conservator, FHFA had assumed all powers formerly held by each Enterprise's officers, directors, and shareholders and was directing its efforts as conservator toward minimizing losses, limiting risk exposure, and ensuring that the Enterprises priced their services to adequately address their costs and risk. Finally, the agencies described how each Enterprise, concurrent with being placed in conservatorship, entered into a Senior Preferred Stock Purchase Agreement (PSPA) with the United States Department of the Treasury (Treasury) and that the PSPAs provided capital support to the relevant Enterprise if the Enterprise's liabilities exceeded its assets under GAAP.[139]

The agencies received only a few comments on proposed section 8, and those commenters generally supported allowing the Enterprises' guarantee to be an acceptable form of risk retention in accordance with the conditions proposed. As a consequence the agencies have decided to adopt section 8 without any change.

While the agencies understand the issues involved with the Enterprises' participation in the mortgage market, the agencies continue to believe that it is appropriate, from a public policy perspective, to recognize the guarantee of the Enterprises as fulfilling their risk retention requirement under section 15G of the Exchange Act, while in conservatorship or receivership with the capital support of the United States.[140] The authority and oversight of the FHFA over the operations of the Enterprises or any successor limited-life regulated entity during a conservatorship or receivership, the full guarantee provided by these entities on the timely payment of principal and interest on the mortgage-backed securities that they issue, and the capital support provided by Treasury under the PSPAs[141] provide a reasonable basis consistent with the goals and intent of section 15G for recognizing the Enterprise guarantee as meeting the Enterprises' risk retention requirement.

For similar reasons, the agencies believe that final rule's restrictions and prohibitions on hedging and transfers of retained interests should not apply to an Enterprise or any successor limited-life regulated entity, as long as the Enterprise (or limited-life successor

[137] While more than one commenter suggested that a sponsor who retains the B-piece be allowed to transfer the B-piece within the five year-period, the agencies do not agree that the sponsor should be treated differently from a third-party purchaser in this regard. The obligation to hold the B-piece for the five year-period is designed to, and will help, ensure high quality underwriting regardless of whether it is held by the sponsor or a third party.

[138] *See* Original Proposal, 76 FR at 24111–24112; Revised Proposal, 78 FR at 57959–57961.

[139] Under each PSPA as amended, Treasury purchased senior preferred stock of each Enterprise. In exchange for this cash contribution, the liquidation preference of the senior preferred stock that Treasury purchased from the Enterprise under the respective PSPA increases in an equivalent amount. The senior preferred stock of each Enterprise purchased by Treasury is senior to all other preferred stock, common stock or other capital stock issued by the Enterprise.

Treasury's commitment to each Enterprise is the greater of: (1) $200 billion; or (2) $200 billion plus the cumulative amount of the Enterprise's net worth deficit as of the end of any calendar quarter in 2010, 2011 and 2012, less any positive net worth as of December 31, 2012. Under amendments to each PSPA signed in August 2012, the fixed-rate quarterly dividend that each Enterprise had been required to pay to Treasury was replaced, beginning on January 1, 2013, with a variable dividend based on each Enterprise's net worth, helping to ensure the continued adequacy of the financial commitment made under the PSPA and eliminating the need for an Enterprise to borrow additional amounts to pay quarterly dividends to Treasury. The PSPAs also require the Enterprises to reduce their retained mortgage portfolios over time.

[140] *See* Revised Proposal, 78 FR at 57960.

[141] By its terms, a PSPA with an Enterprise may not be assigned, transferred, inure to the benefit of, any limited-life, regulated entity established with respect to the Enterprise without the prior written consent of Treasury.

entity) is operating consistent with the conditions set out in the rule. In the past, the Enterprises have sometimes acquired pool insurance to cover a percentage of losses on the mortgage loans comprising the pool.[142] FHFA also has made risk-sharing through a variety of alternative mechanisms a major goal of its Strategic Plan for the Enterprise Conservatorships.[143] Because each Enterprise, while in conservatorship or receivership and operating with capital support from the United States, will need to fully guarantee, and hold the credit risk on, the mortgage-backed securities that it issues for the provisions of section 8 of the rule to apply, the prohibition on hedging the credit risk that a retaining sponsor is otherwise required to retain would have limited the ability of the Enterprises to acquire such pool insurance in the future or take other reasonable actions to limit losses that would otherwise arise from the Enterprises' full exposure to the credit risk of the securities that they issue.

If any of the conditions in the rule cease to apply, an Enterprise or any successor organization will no longer be able to rely on its guarantee to meet the risk retention requirement under section 15G of the Exchange Act and will need to retain risk in accordance with one of the other applicable sections of this risk retention rule. Because section 8 of the rule applies only so long as the relevant Enterprise operates under the authority and control of FHFA and with capital support from the United States, the agencies continue to believe that the rule's approach with regard to the Enterprises' compliance with the risk retention requirement of section 15G of the Exchange Act is consistent with the maintenance of quality underwriting standards, in the public interest, and consistent with the protection of investors.[144]

The agencies recognize ongoing activity related to reform of the Enterprises, and expect to revisit and, if appropriate, modify this and other provisions after the future of the Enterprises and of the statutory and regulatory framework for the Enterprises becomes clearer. The agencies will continue to consider the impact of potential arbitrage between various markets and market participants, and in particular between the Enterprises and the private securitization markets, and whether adjustments should be made to enhance investor protection and financial stability.

7. Open Market Collateralized Loan Obligations

a. Background

A CLO is an asset-backed security that is typically collateralized by portions of tranches of senior, secured commercial loans or similar obligations of borrowers who are of lower credit quality or that do not have a third-party evaluation of the likelihood of timely payment of interest and repayment of principal. As discussed in the reproposal, commenters distinguished between two general types of CLOs: open market CLOs and balance sheet CLOs. As described by commenters, a balance sheet CLO securitizes loans already held by a single institution or its affiliates in portfolio (including assets originated by the institution or its affiliate) and an open market CLO securitizes assets purchased on the secondary market, in accordance with investment guidelines.

CLOs are organized and initiated by a CLO manager usually when the CLO manager partners with a structuring bank that assists in financing asset purchases that occur before the legal formation of the CLO.[145] After the terms of a CLO transaction, including investment guidelines, are agreed upon with key investors, the CLO manager will usually have sole discretion under the governing documents to select portions of tranches of syndicated commercial loans on the primary or secondary market to be acquired by the CLO in compliance with the investment guidelines. An SPV (issuing entity) is formed to issue the asset-backed securities collateralized by commercial loans that the CLO manager has selected and directed the CLO issuing entity to purchase. The CLO manager retains the obligation to actively manage the asset portfolio, in accordance with the investment guidelines, and earns management fees and performance fees[146] for management services provided.

CLOs are a type of CDO. Both are organized and initiated by an asset manager that also actively manages the assets for a period of time after closing in compliance with investment guidelines. Typically, both CLOs and CDOs are characterized by relatively simple sequential pay capital structures and significant participation by key investors in the negotiation of investment guidelines.

As discussed in the reproposal and below, the agencies believe that the risk retention rules apply to CLOs because CLO managers clearly fall within the statutory definition of ''securitizer'' set forth in Exchange Act section 15G. Moreover, the agencies believe it is consistent with the purpose of section 15G of the Exchange Act and principles of statutory interpretation to apply the risk retention rules to CLOs. There is no indication that Congress sought to exclude any specific type of securitization structure from the requirements of section 15G. Other than mandating specific types of exemptions based on underwriting quality and for securitizations involving certain public entities,[147] Congress directed the agencies to apply risk retention generally with respect to all asset-backed securities. Subject only to specific limitations, authority to determine other exemptions was left to the implementing agencies.

Moreover, contrary to commenters' suggestions, as discussed below, developments in the CLO and leveraged loan market suggest that CLOs present many of the same incentive alignment and systemic risk concerns that the risk retention requirements of section 15G were intended to address. CLO issuance has been increasing in recent years.[148] Paralleling this increase has been rapid growth in the issuance of leveraged loans,[149] which are the primary assets purchased by most CLOs. Heightened activity in the leveraged loan market has been driven by search for yield and a corresponding increase in risk appetite by investors.[150] The agencies note that there is evidence that this increased activity in the leveraged loan market has coincided with widespread loosening of underwriting standards.[151] In fact, a recent review of a sample of leveraged loans by the Federal banking agencies found that forty-two percent of leveraged loans examined were criticized by examiners.[152] The agencies

[142] Typically, insurers would pay the first losses on a pool of loans, up to 1 or 2 percent of the aggregate unpaid principal balance of the pool.

[143] *See, e.g.,* FHFA 2012 Report at 7–11; FHFA 2013 Report at 7–11.

[144] *See* Original Proposal, 76 FR at 24112; Revised Proposal 78 FR at 57961.

[145] Board of Governors of the Federal Reserve System, *Report to the Congress on Risk Retention* 22 (Oct. 2010).

[146] In many cases, a portion of the manager's fees are subordinated or contingent upon asset performance.

[147] 15 U.S.C. 78o–11(e).

[148] *Monetary Policy Report,* Board of Governors of the Federal Reserve System, at 23 (July 2014).

[149] *Id.* at 22; *Semiannual Risk Perspective: Spring 2014,* Office of the Comptroller of the Currency, at 29 (June 2014).

[150] *Monetary Policy Report,* at 1–2, 22.

[151] *Id.; Semiannual Risk Perspective: Spring 2014,* at 5.

[152] *Shared National Credits Program: 2013 Review,* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, at 3 (September 2013) (''A focused review of leveraged loans found material widespread weakness in underwriting practices, including excessive

believe that increases in the origination and pooling of poorly underwritten leveraged loans could expose the financial system to risks.[153] The Federal banking agencies have been monitoring this market closely and have responded to concerns by issuing updated leveraged lending supervisory guidance, which outlines principles related to safe and sound leveraged lending activities, including expectations that banks and thrifts exercise prudent underwriting standards when originating leveraged loans, regardless of intent to hold or distribute them.[154] As discussed in more detail below, these developments in the leveraged loan and CLO market represent similar dynamics to issues in the originate-to-distribute model that were a major factor in the recent financial crisis and that section 15G was intended to address.

For these reasons, and others discussed below, the agencies believe it is appropriate to apply risk retention rules to open market CLOs as well as balance sheet CLOs.

b. Overview of Original Proposal and Reproposal

In the original proposal, the agencies observed that a CLO manager generally acts as the sponsor by selecting the commercial loans to be purchased by the CLO issuing entity and managing the securitized assets once deposited in the CLO structure.[155] Accordingly, the original proposal would have required the CLO manager to satisfy the minimum risk retention requirement for each CLO securitization transaction that it managed by holding a sufficient amount of standard risk retention. The original proposal did not include a form of risk retention designed specifically for CLO securitizations.

As discussed in the reproposal, many commenters on the original proposal raised concerns regarding the impact of the proposal on open market CLOs. Some commenters asserted that most asset management firms currently serving as open market CLO managers do not have the balance sheet capacity to fund 5 percent horizontal or vertical slices of the CLO. They asserted that imposing standard risk retention requirements on these managers could cause independent CLO managers to exit the market or be acquired by larger firms. According to these commenters, the resulting erosion in market competition could increase the cost of credit for large companies that are of lower credit quality or that do not have a third-party evaluation of the likelihood of timely payment of interest and repayment of principal and that are represented in CLO portfolios above the level that otherwise would be consistent with the credit quality of these companies.

Certain commenters also asserted that open market CLO managers are not ''securitizers'' under section 15G of the Exchange Act and, therefore, the agencies do not have the statutory authority to subject them to risk retention requirements. These commenters asserted that CLO managers are not ''securitizers'' as defined in section 15G of the Exchange Act because they do not own, sell, or transfer the loans that comprised the CLO's collateral pool, but only direct which assets would be purchased by the CLO issuing entity.

In the reproposal, the agencies discussed these comments and explained that the definition of ''securitizer'' under section 15G of the Exchange Act applied to open market CLO managers.[156] To help address concerns raised by commenters to the initial proposal, the agencies proposed an alternative method for risk retention compliance for CLOs that the agencies believed would be consistent with the purposes of risk retention. This alternate approach would be available under the reproposal to an open market CLO, the assets of which consist primarily of portions of senior, secured syndicated loans acquired by the issuing entity directly from sellers in open market transactions and servicing assets, and that holds less than 50 percent of its assets by aggregate outstanding principal amount in loans syndicated by lead arrangers that are affiliates of the CLO or CLO manager or originated by originators that are affiliates of the CLO or CLO manager (lead arranger option).

Under the reproposal, as an alternative to the standard options for vertical or horizontal risk retention, the sponsor of an open market CLO could avail itself of the lead arranger option only if, among other requirements: (1) The CLO did not hold or acquire any assets other than CLO-eligible loan tranches (discussed below) and servicing assets (as defined in the reproposed rule); (2) the CLO did not invest in ABS interests or credit derivatives (other than permitted hedges of interest rate or currency risk); and (3) all purchases of assets by the CLO issuing entity (directly or through a warehouse facility used to accumulate the loans prior to the issuance of the CLO's liabilities) were made in open market transactions on an arm's length basis. In addition, to be eligible for the option, the governing documents of the open market CLO would have to require, at all times, that the assets of the open market CLO consist only of CLO-eligible loan tranches and servicing assets.

Under the reproposal's lead arranger option, a term loan of a syndicated credit facility to a commercial borrower would have qualified as a CLO-eligible loan tranche if the firm serving as lead arranger for the term loan tranche were to retain at least 5 percent of the face amount of the term loan tranche. The lead arranger would have been required to retain this portion of the loan tranche until the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of the loan tranche. This requirement would have applied regardless of whether the loan tranche was purchased on the primary or secondary market, or was held at any particular time by an open market CLO, and was designed to allow meaningful risk retention to be held by a party that has significant control over the underwriting of assets that are typically securitized in CLOs, without causing significant disruption to the CLO market.

In order to ensure that a lead arranger retaining risk had a meaningful level of influence on loan underwriting terms, the reproposal would have required that the lead arranger be identified in the legal documents governing the origination, participation or syndication of the syndicated loan or credit facility and that such documents include covenants by the lead arranger that it will fulfill the requirement to retain a minimum of 5 percent of the face amount of the CLO-eligible loan tranche. The lead arranger also would be required to take on an initial allocation of at least 20 percent of the face amount of the broader syndicated loan or credit facility, with no other member of the syndicate assuming a larger allocation or commitment. Additionally, a retaining lead arranger would have been required to comply with the same sales and hedging restrictions as sponsors of other securitizations until the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of the loan tranche. Voting rights within the broader

leverage, inability to amortize debt over a reasonable period, and lack of meaningful financial covenants.'').

[153] *See, e.g., Semiannual Risk Perspective: Spring 2014,* at 8.

[154] *See* ''Interagency Guidance on Leveraged Lending,'' Final Supervisory Guidance, 78 FR 17766 (March 22, 2013), at *http://www.gpo.gov/fdsys/pkg/FR-2013-03-22/pdf/2013-06567.pdf* (Leveraged Lending Guidance).

[155] *See* Original Proposal, 76 FR at 24098 n. 42.

[156] *See* 2013 Reproposal, 78 FR at 57962.

syndicated loan or credit facility would also have to be defined in such a way that holders of the ''CLO-eligible'' loan tranche had, at a minimum, consent rights with respect to any material waivers and amendments of the legal documents governing the underlying CLO-eligible loan tranche. Additionally, the pro rata provisions, voting provisions, and security associated with the CLO-eligible loan tranche could not be materially less advantageous to the holders of that tranche than the terms of other tranches of comparable seniority in the broader syndicated credit facility.

Under the reproposal's lead arranger option for open market CLOs, the sponsor would have been required to disclose a complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing). This list would have been required to include the following information: (i) The full legal name and Standard Industrial Classification category code of the obligor of the loan or asset; (ii) the full name of the specific CLO-eligible loan tranche held by the CLO; (iii) the face amount of the CLO-eligible loan tranche held by the CLO; (iv) the price at which the CLO-eligible loan tranche was acquired by the CLO; and (v) for each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions. Second, the sponsor would have been required to disclose the full legal name and form of organization of the CLO manager. This information would have been required to be disclosed a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction (and at least annually with respect to information regarding the assets held by the CLO) and, upon request, to the Commission and the sponsor's appropriate Federal banking agency, if any. Further, the lead arranger and CLO manager would be required to certify or represent as to the adequacy of the collateral and the attributes of the borrowers of the senior, secured syndicated loans acquired by the CLO and certain other matters.

c. Overview of Public Comments

The agencies received many comments asserting that the proposed options for open market CLOs would be unworkable under existing CLO practices and would lead to a significant reduction in CLO offerings and a corresponding reduction in credit to commercial borrowers. These commenters asserted that the likelihood of a significant number of lead arrangers retaining 5 percent risk retention (in any of the forms permitted by the rule) would be remote and only the largest CLO managers would be able to finance the proposed risk retention requirement through the standard risk retention option. While larger managers might have sufficient financing, several commented that the risk retention requirements would make the management of CLOs less profitable and might cause many managers to decrease their activity in the market. One commenter highlighted a recently issued paper by the Bank of England and the European Central Bank to suggest that risk retention rules in Europe that apply to CLO managers have contributed to a reduction in European CLO issuance.[157] Several commenters asserted that if the risk retention requirement causes a reduction in participation by open market CLOs in the leveraged loan market, some of the resulting reduced credit availability would be replaced by non-CLO credit providers, but cost of capital and instability in the market would increase.

Some commenters expressed specific concerns about the proposed lead arranger option. These commenters stated that having lead arrangers hold a portion of the loan would increase the costs of arranging loans, thus restricting the availability of credit to borrowers or increasing the cost of credit to borrowers. In addition, commenters expressed concern that few loans would satisfy the definition of ''CLO-eligible loan tranche.'' Furthermore, they asserted that the additional voting rights required by the reproposal would be administratively unworkable and commercially unacceptable. Several commenters also raised concerns that the proposed option would expose the arranger to potential liability and litigation risks that arrangers should not be expected, and would not be willing, to assume. Commenters raised particular concern about the requirement that a lead arranger represent that the loans and collateral meet specified criteria. They asserted that such a representation would require the lead arranger to make subjective and difficult determinations regarding the adequacy of collateral, and the sufficiency of the security interest in the collateral and certain other matters, and could expose the lead arranger to potential liability.

Another concern raised by several commenters was that the proposed lead arranger option would prevent prudent risk management practices and thus invite criticism from lead arrangers' bank regulators because the hedging restriction would prohibit arrangers from actively managing the risks and disposing of loan assets in response to market conditions, and would limit lead arrangers' capacities to provide other forms of credit to borrowers. Further, commenters stated that use of the option would increase the capital and FDIC assessment charges for lead arranger banks and cause corresponding increases in the pricing of CLO-eligible tranches. In addition, some commenters raised concerns that the proposed option's creation of both CLO-eligible loans and non-eligible loans with otherwise comparable characteristics would distort and restrict the initial syndication process and the secondary loan market, as the secondary loan market would place a premium on CLO-eligible loans and liquidity related to non-eligible loans would be reduced. Relative to a ''normal'' market, both types of loans would be less liquid because they would each reflect a smaller, divided market.

As discussed in Part B.1 of this Supplementary Information, a number of commenters expressed concern that the proposed restriction on cash flow distributions to eligible horizontal residual interests would make the eligible horizontal residual interest an unworkable option for CLOs. They suggested that the cash flow distribution restriction would significantly reduce returns to equity investors, making CLOs unattractive investments and cause dramatically reduced CLO issuances. Further, a few commenters supported a phase-in period while markets adjust to the final rule or a grandfathering for certain legacy CLOs. Two commenters also recommended that the risk retention rules follow the European risk retention rules with respect to CLOs.[158] One such commenter expressed concerns that inconsistent regulations would cause bifurcation of the CLO market and substantially reduce market liquidity. Further, a few commenters asserted that the costs of imposing risk retention on CLO managers exceeds the benefits and that the agencies have not performed an adequate economic analysis in connection with the CLO option.

[157] *The Case for a Better Functioning Securitisation Market in the European Union,* Bank of England and the European Central Bank (May 2014), available at *https://www.ecb.europa.eu/pub/pdf/other/ecb-boe_case_better_functioning_securitisation_marketen.pdf.*

[158] The agencies note that Articles 404–410 of the EU Capital Requirements Regulation significantly amended Article 122a of the European Union's Capital Markets Directive with respect to the use of third parties to retain risk.

Some commenters continued to assert that open market CLO managers are not ''securitizers'' and are, therefore, not subject to section 15G. These commenters asserted that under the plain language of the statute, CLO managers cannot ''sell'' or ''transfer'' the assets securitized through the CLO because they do not own, possess, or control the assets. Additionally, commenters asserted that the CLO manager acts as an agent to the CLO issuing entity in directing the purchase of assets, so it could not sell or transfer the assets to a third party to meet the definition, because it would be equivalent to selling or transferring the assets to itself. They asserted that the use of ''indirectly'' in the definition of securitizer was intended to prevent the party that originates a loan from avoiding risk retention obligations by passing the loan through an associated intermediary that organized and initiated the securitization.

The commenters also asserted that the interpretation is not supported by the legislative history or statutory purpose of the Dodd-Frank Act. They suggested that Congress primarily intended to address problems with the originate-to-distribute model and transparency issues in securitization transactions, but open market CLOs differ from the originate-to-distribute model and are more transparent than the products Congress sought to regulate. The commenters stated that in the originate-to-distribute model originators receive significant up-front fees for originating loans, which they transfer into securitization pools to promote the business of creating additional loans. They asserted that CLOs differ from this model because the primary purpose of CLOs is to provide investors with the ability to gain exposure to commercial loans on a diversified basis, not to finance the creation of financial assets. They also asserted that, unlike originators in the originate-to-distribute model, who receive their compensation by originating and transferring the assets to securitization pools, the bulk of CLO managers' compensation is based on performance of the securitized assets in the CLO. Regarding the transparency issues that Congress sought to address, the commenters suggested that the primary concern of Congress was to apply risk retention to highly opaque and complex products like re-securitizations of asset-backed securities. These commenters asserted that CLOs are more transparent than such products because they contain fewer, larger, loans and the obligors of such loans are typically known corporations on which investors can perform extensive due diligence, and the loans are traded in a liquid market that assesses risks and underwriting quality.

In addition to the above comments, some commenters requested alternative options for meeting risk retention or that the agencies provide an exemption from risk retention for managers of open market CLOs where certain criteria would be met because of the nature and characteristics of open market CLOs. In this regard, commenters asserted that open market CLOs operate independently of originators and are not part of, and do not pose the same risks as, the originate-to-distribute model. They also suggested that CLO managers' interests are fully aligned with CLO investors' interests because CLO managers bear significant risk through their deferred, contingent compensation structure, which they asserted is based heavily on performance of the securitized assets. Further, commenters stated that most CLO managers are registered investment advisors with associated fiduciary duties to their investors. One commenter also referred to other regulations and guidance, asserting that they already provide meaningful protections against imprudent or inferior underwriting, including the leveraged lending guidance released by the Federal banking agencies in 2013.[159] Several commenters also supported their arguments by indicating that the assets selected by CLO managers are evaluated through multiple layers of underwriting and market decisions and CLO loan portfolios are actively managed for much of the life of a CLO. Commenters further asserted that CLO managers select senior secured commercial loans with investor protection features. Some commenters asserted that, unlike many other securitizations, CLOs are securitizations of liquid assets and they are structurally transparent. They also stated that CLOs have historically performed well and that this strong performance is evidence that further regulation is unnecessary and that customary features of CLOs, including overcollateralization and interests coverage tests, protect investors. The alternative options and exemption requests are discussed in further detail below.

[159] *See Leveraged Lending Guidance.*

d. Response to Comments

i. Definition of ''Securitizer'' and Legislative History of Section 15G

The agencies have considered the concerns raised by commenters with respect to the reproposal, including with respect to open market CLOs. As discussed above, commenters asserted that CLO managers could not be ''securitizers'' within the definition thereof in section 15G of the Exchange Act, including the contention that they do not legally own, possess, or control the assets.

As explained in the reproposal, the agencies believe that CLO managers are clearly included within the statutory definition of ''securitizer'' set forth in section 15G of the Exchange Act. Subpart (a)(3)(B) of section 15G begins the definition of a ''securitizer'' by describing a securitizer as a ''person who organizes and initiates an asset-backed securities transaction.'' CLOs clearly meet the definition of ''asset-backed security'' set forth in section 3 of the Exchange Act, which defines ''asset-backed security'' as ''a fixed income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on the cash flow from the asset.'' [160] As discussed above, a CLO is a fixed income or other security that is typically collateralized by portions of tranches of senior, secured commercial loans or similar obligations. The holder of a CLO is dependent upon the cash flow from the assets collateralizing the CLO in order to receive payments. Accordingly, a CLO is an asset-backed securities transaction for purposes of the risk retention rules.[161]

A CLO manager typically negotiates the primary deal terms of the transaction and the primary rights of the issuing entity and uniformly directs such entity to acquire the commercial loans that comprise its collateral pool. Under the plain language of the statute, therefore, a CLO manager organizes and initiates an asset-backed securities transaction.[162]

The definition continues that the organizer and initiator of a CLO does so

[160] *See* 15 U.S.C. 78c(a)(79).

[161] Furthermore, CDOs are specifically mentioned as examples both in the definition of ''asset-backed security'' and elsewhere in section 941 of the Dodd-Frank Act. *See* 15 U.S.C. 78c(a)(79)(A)(ii) and 78o–11(c)(1)(F). As discussed above, CLOs are a type of CDO and CLOs and CDOs have the same general structure.

[162] The definition of ''sponsor'' is discussed in Part II of this Supplementary Information.

''by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer.'' A CLO manager indirectly transfers the assets to the CLO issuing entity because the CLO manager has sole authority to select the commercial loans to be purchased by the CLO issuing entity for inclusion in the CLO collateral pool, directs the issuing entity to purchase such assets in accordance with investment guidelines, and manages the securitized assets once deposited in the CLO structure. Most importantly, an asset is not transferred to the CLO issuing entity unless the CLO manager has selected the asset for inclusion in the CLO collateral pool and instructed the CLO issuing entity to acquire it.

Although some commenters have narrowly interpreted the term ''transferring'' to specifically require legal ownership or possession of the object being transferred, the agencies observe that the plain meaning of ''transfer'' does not first require ownership or possession and otherwise is not as narrow as these commenters assert.[163] ''Transfer'' is commonly defined as ''to cause to pass from one to another,'' which is precisely what the CLO manager does.[164] The CLO manager causes assets to be passed from the seller to the issuing entity because the CLO manager selects the assets for the collateral pool and directs the issuing entity to purchase such assets. Therefore, the CLO manager ''transfers'' the assets according to a commonly accepted definition of the word. There is no indication in the statute that Congress intended to interpret the word ''transfer'' as narrowly as commenters have advocated. If Congress had desired such an interpretation that would be narrower than how the term is commonly defined, the agencies believe that additional limiting language would have been included in the statute. CLO managers, therefore, fall clearly within the statutory definition of ''securitizer'' as set forth in Exchange Act section 15G.

Even if there were ambiguity as to whether CLO managers are covered by the definition of ''securitizer,'' the agencies believe that the interpretation of ''securitizer'' to include CLO managers is reasonable. In addition to being consistent with commonly used definitions of ''transfer,'' as discussed above, the interpretation is consistent with the context, purposes and legislative history of the statute. Further, the alternative interpretation argued by commenters would lead to results that would be contrary to the purposes of section 941 and Congressional intent.

The text surrounding the word ''transfer'' supports the agencies' interpretation of the word. To read ''transfer'' narrowly to require ownership or possession would make the preceding word ''sell'' superfluous because the act of selling necessarily involves the legal transfer of the asset.[165] In addition, the agencies do not believe that the phrase ''including through an affiliate'' bolsters the commenters' claim that ''transfer'' was intended to be interpreted in this limited manner because the use of the word ''include'' in a statute can signal that what follows is meant to be illustrative rather than exclusive.[166] As stated earlier, the agencies believe that a CLO manager generally acts as the sponsor by selecting the commercial loans to be purchased by the CLO issuing entity and managing the securitized assets once deposited in the CLO structure, which the agencies believe is a transfer or indirect transfer of the assets.

The agencies also disagree with the commenters' assertion that the CLO manager does not transfer or sell assets because, as an agent of the CLO, it is on the same side of the transaction as the purchaser (the special purpose issuing entity). Under the same reasoning, one could claim that an originator of assets that creates a special purpose vehicle to issue asset-backed securities and transfers assets to that special purpose vehicle could never be a securitizer, because the originator also essentially would be transferring the assets to itself. If that were the case, then many types of securitizations would not have an entity that would be subject to risk retention.

Moreover, the agencies disagree with commenters' assertions that Congress intended section 15G to apply primarily to securitizations within the originate-to-distribute model. Congress did not specify that the requirements of the statute apply only to certain types of securitization models or structures. Indeed, section 15G specifies that risk retention applies to all securitizers,[167] unless they have a specific exemption under the statute or the agencies provide a specific exemption in accordance with criteria set forth in the statutory text.[168] Congress did not specifically exclude securitizations that are not part of an originate-to-distribute model—or any other particular market model or structure of securitization—from risk retention. Although the legislative history indicates that Congress was concerned about securitizations within the originate-to-distribute model, nowhere in the text or legislative history did Congress indicate that it intended for risk retention not to apply to transactions that some may assert are not ''originate-to-distribute'' securitizations.

Furthermore, the leveraged loan market shares characteristics with the ''originate-to-distribute'' model that led to the deterioration in underwriting standards that were a major factor in the recent financial crisis. Originators of leveraged loans often retain little or no interest in the assets they originate, and originate and underwrite with the intention of distributing the entire loan. In this regard, leveraged loans purchased by CLOs are often originated as a fee-generating, rather than a lending business, and originators do not have the same incentive to underwrite carefully as they would for loans they intend to keep in portfolio. These characteristics of the leveraged loan market pose potential systemic risks similar to those observed in the residential mortgage market during the crisis, whether the loans are placed with CLOs or other types of institutional investors.

Additionally, there is no evidence to support the notion that Congress expected ''securitizer'' to be read narrowly so that risk retention requirements would apply only to sponsors of securitizations which have a specific type of structure or only to sponsors that fulfill a narrow and specific structural role in a

[163] *See, e.g., Babbitt* v. *Sweet Home Chapter of Communities for a Great Or.,* 515 U.S. 687, 697–98 (1995) (rejecting the argument that the word ''harm,'' defined ''to cause hurt or damage to: injure,'' should be read so narrowly as to require a showing of direct injury to something).

[164] *Merriam-Webster's Collegiate Dictionary* 1253 (10th ed. 1995); *See also Random House Webster's College Dictionary* 1366 (2nd ed. 1997); *The New Oxford American Dictionary* 1797 (Elizabeth J. Jewell & Frank Abate eds., 2001).

[165] *Cf. Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) (stating that it is one of the most basic interpretive canons, that '' '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. . . .' '') (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed. 2000)).

[166] *See Samantar* v. *Yousuf,* 560 U.S. 305, 316–17 (2010). While Congress referred to transferring through affiliates as an example of indirect transfer, it did not preclude other forms of indirect transfer in the definition of ''securitizer,'' nor did it specifically limit the definition to parties in the chain of title.

[167] *See* 15 U.S.C. 78o–11(b)(1) (''[T]he Federal banking agencies and the Commission shall jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.'').

[168] *See* 15 U.S.C. 78o–11(c)(1)(G)(i) and 15 U.S.C. 78o–11(e).

securitization transaction. Furthermore, the agencies believe that the narrow reading of ''securitizer'' supported by commenters could lead to results that would appear contrary to Congressional intent by opening the statute to easy evasion. Under such an interpretation, it would be feasible for many sponsors to evade risk retention by hiring a third-party manager to ''select'' assets for purchase by the issuing entity that have been pre-approved by the sponsor. This could result in a situation in which no party to a securitization can be found to be a ''securitizer'' because the party that organizes the transaction and has the most influence over the quality of the securitized assets could avoid legally owning or possessing the assets.[169] Interpreting the term ''securitizer'' to produce such an easily evaded rule would be an unreasonable result that cannot comport with the intent of Congress in enacting section 15G of the Exchange Act.

With respect to the issuance of asset-backed securities, there is always a sponsor responsible for the organization and initiation of the issuance of asset-backed securities.[170] The issuing entity for a CLO transaction is a special purpose vehicle formed by some other party solely for the express purpose of issuing asset-backed securities. However, some person or other entity—namely, the sponsor—''organized and initiated'' this special purpose vehicle with the intent that this special purpose vehicle would issue asset-backed securities. The agencies do not believe that the special purpose vehicle formed to issue asset-backed securities in a CLO transaction does so independent of the actions of a sponsor. The agencies also note that the commenters did not identify another party to an open market CLO transaction other than the CLO manager that should be considered the sponsor.

As indicated in the legislative history of the Dodd-Frank Act, the broad purpose of the statute was to ''create incentives that will prevent a recurrence of the excesses and abuses that preceded the crisis, restore investor confidence in asset-backed finance, and permit securitization markets to resume their important role as sources of credit for households and businesses.'' [171] In drafting section 941, Congress recognized that it would be impractical for many investors to adequately assess and monitor the risks of assets underlying complex securitization products.[172] As a result, Congress sought to encourage monitoring and assessment of such assets by the parties better suited to do so, namely those who organize and initiate the securitizations.[173] Like other securitization sponsors, a CLO manager is the party best positioned to adequately monitor and assess the risk of the securitized assets. For the reasons discussed above, the agencies continue to find that a CLO manager is a ''securitizer'' under section 15G of the Exchange Act.[174]

ii. Exemption Requests and Alternative Proposals

Many commenters suggested that the risk retention rules should not be applied to open market CLOs because, as described above, they believe the structural and other characteristics of open market CLOs make risk retention unnecessary. Among the primary characteristics highlighted to justify an exemption, commenters asserted that CLO managers' subordinated compensation structure aligns their interests with those of investors, CLOs differ from the originate-to-distribute model, and the underwriting of CLOs' assets is subject to multiple levels of scrutiny. As an alternative to an exemption based solely on such characteristics, several commenters supported exemptions for open market CLOs meeting certain qualifications. One commenter proposed an exemption from risk retention for open market CLOs that met the following conditions: (i) The asset manager must be a registered investment adviser under the Investment Advisers Act of 1940;[175] (ii) all U.S. investors must be qualified purchasers or knowledgeable employees, consistent with reliance on the section 3(c)(7) exemption from investment company status under the Investment Company Act; [176] (iii) the pool of assets are permitted and expected to be traded by the asset manager on behalf of the issuer in accordance with contractually agreed restrictions; (iv) the asset management agreement establishes a standard of care that requires the asset manager to employ a degree of skill and care no less than it uses for its own investments and consistent with industry standards for asset managers that are acting on behalf of comparable clients; and (v) the investment adviser effects agency cross trades on behalf of its advisory client only in accordance with section 275.206(3)–2 of the Commission's rules under the Investment Advisers Act.[177]

The agencies also received several comments in continued support of an option that was suggested with respect to the original proposal that the agencies did not include in the revised proposal. This suggestion would allow an open market CLO manager to satisfy its risk retention requirement by holding a combination of notes issued by the CLO, modeled to reflect the risks assumed by CLO managers through their subordinated compensation structure, and equity securities issued by the CLO and purchased by the CLO manager.

Several commenters supported an option that would expand the above proposal by allowing managers of ''Qualified CLOs'' to satisfy the risk retention requirement by purchasing 5 percent of the CLO's equity and maintaining a subordinated compensation structure. Commenters proposed that, in order to be deemed a Qualified CLO, the CLO's governing transaction documents would have to include specific requirements in the following areas: Asset quality; portfolio composition; structural features; alignment of the interests of the CLO manager and investors in the CLO's securities; regulatory oversight; and transparency and disclosure. Commenters suggested requirements under each of these categories that they asserted would ensure high quality underwriting and investor protection. They also suggested that this proposal should be adopted along with the third-party option and pro rata risk retention reduction proposals described below, as they do not feel that the option alone would sufficiently address the projected

[169] As discussed, Congress clearly expected this rule to apply to sponsors of CDOs, but the commenters' claims, if credited, would also exclude sponsors of CDOs from the requirements of risk retention.

[170] Similar to the agencies interpretation of ''securitizer'' to include CLO managers, the definitions of ''issuer'' in both the Securities Exchange Act of 1934 and Securities Act of 1933 include, with respect to certain kinds of vehicles, ''the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the securities are issued.''

[171] S. Rep. No. 111–176, at 128.

[172] *Id.*

[173] *Id.* at 129 (''When securitizers retain . . . risk, they have 'skin in the game,' aligning their economic interests with those of investors. . . . Securitizers who retain risk have a strong incentive to monitor the quality of the assets they purchase from originators, package into securities, and sell. . . . Originators . . . will come under increasing market discipline because securitizers who retain risk will be unwilling to purchase poor-quality assets.'').

[174] Furthermore, the agencies believe that this applies to other issuances of asset-backed securities in which the securitized assets are selected by a manager and no other transaction party meets the definition of ''sponsor.'' See Parts III.B.4 and III.B.8 of this Supplementary Information.

[175] 15 U.S.C. 80b–3(b).

[176] 15 U.S.C. 80a–3(c)(7).

[177] 17 CFR 275.206(3)–2.

effects that the rule will have on open market CLOs.

Several commenters suggested that the agencies could adopt the commenters' exemption proposals under the agencies' exemptive authority provided by section 15G(e).[178] Alternatively, commenters supporting the Qualified CLO proposal suggested the proposal could be adopted as a construction of the statutory requirement that a securitizer retain not less than 5 percent of the ''credit risk'' of any asset. In this regard, the commenters asserted that by acquiring 5 percent of the equity interest in the CLO, and by bearing the subordinated risk of non-payment embedded in the compensation structure demanded by investors, the CLO manager would be retaining far more than 5 percent of the credit risk associated with the CLO's assets. As support for this suggestion, the commenters cited research concluding that the majority of likely losses for a typical CLO are borne by the bottom 20 percent of the CLO capital structure.

The agencies do not believe that it would be appropriate to exempt open market CLOs from the risk retention requirement under section 15G(e). The statute permits the agencies to adopt or issue exemptions, if the exemption would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.[179] While the agencies recognize that certain structural features of CLOs contribute to aligning the interests of CLO managers with investors, the agencies do not believe these structural features would support a finding that the exemption would help ensure high quality underwriting standards and there are reasons why such an exemption may run counter to the public interest and protection of investors.[180]

As discussed above, many of the structural features that commenters cited as mitigating risk factors for CLOs were shared by other types of CDOs, such as CDOs of asset-backed securities, that performed poorly during the financial crisis. Although the structural features can offer protection to investors in senior tranches, such protections are exhausted when a portfolio's default rate significantly exceeds anticipated losses, as was the case for CDOs of asset-backed securities during the financial crisis. In such a situation, the manager may be incented to engage in even more risky behavior to maintain cash flow and ensure the payment of its subordinated compensation. Although CLOs performed better than other CDOs during the financial crisis, the better performance of leveraged loans after the financial crisis in CLO portfolios could be partially attributed to lowered interest rates and other government interventions. Some commenters claimed that CLOs are composed of higher quality assets that undergo significant underwriting scrutiny and that include investor protection features, but the significant recent credit deterioration in the leveraged loan market, as described above, demonstrates increasing risks in the types of assets held by CLOs. The agencies also note that while the final rule does not include an exemption for open market CLOs, the removal of the proposed restriction on cash flow distributions to the eligible horizontal residual interest, as described in Part B.1 of this Supplementary Information, will provide greater flexibility for CLO managers to satisfy the standard risk retention option, which may reduce the cost of the standard risk retention option.

The agencies recognize that management fees incorporate credit risk sensitivity and may contribute to some degree to aligning the interests of the CLO manager and investors with respect to the quality of the securitized loans. On the other hand, as discussed above, this subordinated compensation structure could also lead to a misalignment of interests between the CLO manager and investors in certain circumstances. Moreover, as discussed in the reproposal, these fees do not appear to provide an adequate substitute for risk retention because they typically have small expected value, especially given that CLOs securitize leveraged loans, which carry higher risk than many other securitized assets. Even combining the expected value of the manager's compensation with a 5 percent interest in the equity of the CLO would be inadequate because, as described by a commenter, such an equity interest would also likely amount to under one percent of the fair value of the ABS interests issued to third parties (which is less than the 5 percent required for an eligible horizontal residual interest). Further, management fees are not funded in cash at closing and therefore may not be available to absorb losses as expected. Generally, the agencies have declined to recognize such unfunded forms of risk retention and the agencies are not persuaded that an exception should be made for open market CLOs.

Some commenters supported an alternative approach that would reduce the risk retention requirement for open market CLOs, on a pro rata basis, to the extent that the commercial loans backing the issued CLO securities met certain underwriting criteria. In order to qualify for reduced risk retention, the commercial loans would have to be senior secured first lien loans that either (i) have a ratio of first lien debt to total capitalization of less than or equal to 50 percent; or (ii) have a total leverage ratio of less than or equal to 4.5 times.[181] Further, this approach would reduce the risk retention requirement to the extent that the CLO holds a subset of loans requiring certain specialized treatment. This approach would require determination of whether a loan qualifies for reduced risk retention treatment to be made at the time of origination. Further, this approach provided that loans originated before the applicable effective date of the rule should not require risk retention when securitized after such date.

The agencies are not persuaded that the risk retention requirement should be reduced to the extent commercial loans backing the issued CLO securities meet the criteria proposed by the commenters. As discussed in Part V.A of this Supplementary Information, the final rule already provides exemptions from the risk retention requirement for qualifying commercial loans that meet specific underwriting standards. The agencies developed these standards to be reflective of very high quality loans. The commenters' approach relies on significantly weaker standards, and the agencies do not believe that these criteria, which would permit securitization with no risk retention for loans to borrowers who are of lower credit quality or that do not have a third-party evaluation of the likelihood of timely payment of interest and repayment of principal, would satisfy the statutory requirements for an exception to help ensure high quality underwriting standards.

[178] One commenter suggested that the Qualified CLO proposal could also be exempted based on the agencies' authority under section 15G(c)(1)(G)(i).

[179] 15 U.S.C. 78o–11(e)(2).

[180] For similar reasons, the agencies do not believe an exemption would be appropriate under section 15G(c)(1)(G)(i).

[181] In this context, leverage ratio refers to the borrower's total debt divided by earnings before interest, taxes, depreciation and amortization (EBITDA).

The agencies also disagree with the proposition that, in the context of CLOs, loans originated before the applicable effective date of the rule should not be subject to risk retention. Section 15G of the Exchange Act applies to any issuance of asset-backed securities after the applicable effective date of the rule, regardless of the date the assets in the securitization were originated. The agencies note, however, that securitizations of loans meeting the seasoned loan exemption in section 19(b)(7) of the rule would not be subject to risk retention requirements.

The agencies also received a number of comments in support of approaches to allow a third party, rather than the CLO manager, to retain some or all of the required credit risk in certain circumstances. To be eligible under these approaches, the third party would be required to have a role in setting the selection criteria for the assets held by a CLO and the power to veto any change to asset selection criteria. Specifically, the commenters' proposal would require: (i) Prior to the CLO's acquisition of the initial CLO assets, the third party to review and assent to key transaction portfolio terms, including the asset eligibility criteria, concentration limits, collateral quality tests, and reinvestment criteria of the CLO's asset pool; and (ii) any material change to the above parameters to receive prior written consent by the third party retaining the CLO credit risk. Further, to enable the third party retaining credit risk to evaluate, before the CLO closes, whether the CLO manager is able to meet the asset selection criteria, the commenters proposed that at least 50 percent of the initial asset pool would have to be acquired (or be under a commitment to be acquired) by the closing date. One of the approaches would also require that the CLO manager be a registered investment adviser and would permit multiple parties to jointly satisfy the CLO's risk retention requirement.

Another commenter proposed a different third-party retention option, under which a sponsor's risk retention requirement would be satisfied if one or more third parties agreed to hold the required minimum risk retention. The commenter's suggested option would only apply to CLOs that are securitizations of corporate debt and servicing assets; inclusion of other ABS interests would be prohibited. The third party or a party appointed by the third party would be required to perform an independent review of the credit risk of each securitized asset. Further, the proposal would require the CLO manager to provide information to investors about the investment experience of each third-party purchaser.

While the agencies considered the third-party retention proposals carefully, they have concluded that the proposals would not provide an appropriate method of risk retention. The proposed third-party retention options would result in retention of the credit risk by a third party that would have less control over the CLO portfolio than the CLO manager. These alternatives would result in weaker means of influencing the underwriting quality in CLO portfolios and are therefore inadequate substitutes for risk retention.

While, as discussed in Part III.B.5 of this Supplementary Information, the final rule allows third-party purchasers to retain credit risk in CMBS transactions, CLO and CMBS transactions vary in several significant ways that make such an option more challenging in the CLO context. For example, differences between CMBS and CLO transactions would make it more challenging for third-party investors to perform thorough independent reviews of loans in CLO portfolios, including the dynamic nature of CLO portfolios and the larger number of loans in typical CLO portfolios. In CMBS transactions, the loan pool is chosen and is static before issuance, which permits loan-level due diligence by the third-party investor. In CLOs, the loan pool is typically not complete before issuance, and the pool is dynamic, limiting the ability of a third-party investor to conduct loan-level due diligence before issuance. Under proposals submitted by commenters, the third-party purchaser would be limited to evaluating investment criteria for the CLO and would not conduct loan-level due diligence. In this regard, the third-party purchaser would not be conducting loan-level re-underwriting, and consequently is not a reasonable substitute for the original effort of the sponsor in underwriting the loan pool. Furthermore, the third-party retention proposals would provide the third-party purchaser with minimal power or influence over the composition or quality of the CLO's collateral pool after closing. In contrast to CMBS transactions that generally give the third-party purchaser the right to reject loans from the pool, no similar authority would be granted to CLO third-party purchasers under commenters' proposals.

Given the weakening of underwriting and increase in risk in the leveraged loan market, the agencies do not believe that existing market practice is sufficiently robust to substitute for risk retention. Furthermore, the agencies do not believe the alternative approaches suggested by commenters would significantly add protection to investors, as investors in CLOs would presumably already have the opportunity to review and assent to key portfolio transaction terms.[182] For these reasons, the agencies have decided against adopting the third-party risk retention option. While the agencies considered whether further parameters around a third-party risk retention option for CLO sponsors would be appropriate, the agencies were not able to identify parameters that would function well for CLOs or that would further the regulatory purposes of the risk retention rules.

The agencies have also carefully considered commenters' views about the impact the proposed rules would have on CLO issuance and the commercial loan markets in general. As discussed in the reproposal, the agencies acknowledge that requiring open market CLO managers to satisfy the risk retention requirement could result in fewer CLO issuances and less competition in this market. However, the agencies note that other entities, such as hedge funds and loan mutual funds, also purchase commercial loans and believe that the market will adjust to the rule and that lending to creditworthy commercial borrowers, on appropriate terms, will continue at a healthy rate. The agencies also note that commenters' concerns about the impact of European risk retention requirements on European CLO issuance may be misplaced, as economic conditions have constrained the available supply of potential collateral for European CLOs.

Furthermore, the agencies believe projected impacts on the CLO market are justified by the benefits that will be produced by subjecting open market CLOs to the risk retention rules. As discussed, the agencies have significant concerns about recent activity in the leveraged loan market. The search for yield in the low interest rate environment has led investors to take on more risk in this market by investing in lower quality commercial loans that contain fewer lender protections.[183] The agencies believe that valuations on lower-rated corporate bonds and

[182] The risk retention approaches for CLOs suggested by commenters also reflect standard market practices for certain other types of CDOs (*e.g.,* CDOs of asset-backed securities) that performed poorly during the financial crisis in which key investors negotiated asset selection criteria and reinvestment criteria and changes to those criteria required investor consent.

[183] *See, e.g., Monetary Policy Report,* at 1–2, 22; *Semiannual Risk Perspective: Spring 2014,* at 5.

leveraged loans are stretched and excesses in these markets could lead to higher levels of future defaults and losses.[184] The origination and securitization of such poorly underwritten loans could generate systemic financial risks.[185]

Increased appetite from investors for higher yielding and higher risk assets in the leveraged loan market creates an environment susceptible to some of the abuses and excesses that occurred in the residential and commercial mortgage markets that contributed to the financial crisis. In particular, the agencies are concerned that this environment could create incentives to originate an increased volume of loans, without regard for quality or underwriting standards, for the purpose of distribution through securitization. The agencies therefore have concluded that requiring open market CLO managers or lead arrangers to retain economic exposure in the securitized assets will help ensure the quality of assets purchased by CLOs, promote discipline in the underwriting standards for such loans, and reduce the risk that such loans pose to financial stability.

For the reasons discussed above, the final rule requires open market CLO managers to satisfy the minimum risk retention requirement for each CLO securitization transaction that it manages by holding a sufficient amount of standard risk retention or meet the requirements of the alternative lead arranger option. After considering all comments, the agencies are adopting, largely as proposed, the lead arranger option for open market CLOs, under which an open market CLO could satisfy the risk retention requirement if the firm serving as lead arranger for each loan purchased by the CLO retains at the origination of the syndicated loan at least 5 percent of the face amount of the term loan tranche purchased by the CLO. The lead arranger is required to retain this portion of the loan tranche until the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of the loan. This requirement applies regardless of whether the loan tranche was purchased on the primary or secondary market, or was held at any particular time by an open market CLO issuing entity.

Under the final rule's lead arranger option, the sponsor is required to disclose a complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing). This list requires the following information (i) the full legal name, Standard Industrial Classification category code and legal entity identifier (LEI) issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation (if an LEI has been obtained by the obligor) of the obligor of the loan or asset; (ii) the full name of the specific CLO-eligible loan tranche held by the CLO; (iii) the face amount of the CLO-eligible loan tranche held by the CLO; (iv) the price at which the CLO-eligible loan tranche was acquired by the CLO; and (v) for each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions. Also, the final rule requires the sponsor to disclose the full legal name and form of organization of the CLO manager. The sponsor is required to provide these disclosures a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction (and at least annually with respect to information regarding the assets held by the CLO) and, upon request, to the Commission and the sponsor's appropriate Federal banking agency, if any. Further, the CLO manager is required to certify or represent as to the adequacy of the collateral and certain attributes of the borrowers of the senior, secured syndicated loans acquired by the CLO and certain other matters.

The agencies have added to the disclosure requirement the disclosure of an obligor's LEI issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation, if an LEI has been obtained by the obligor. The agencies believe that the LEI requirement allows investors in open-market CLOs to better track the performance of assets originated by specific originators. The effort to standardize a universal LEI has progressed significantly over the last few years.[186] As LEI use becomes more mandated and widespread pursuant to other rules, the agencies anticipate that LEI disclosure by obligors under the lead arranger option will become the standard.

In response to commenter concerns, the agencies have removed from the lead arranger option for open market CLOs the requirement that lead arrangers and CLO managers certify as to the adequacy of the collateral and the attributes of the borrowers of the senior, secured syndicated loans that they purchase and certain other matters and make certain covenants. Instead, a lead arranger will be required to certify that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that loans included in a CLO-eligible tranche meet all of the requirements set forth in section 9 of the rule applicable to CLO-eligible loan tranches and has concluded that its internal supervisory controls are effective. CLO managers will be required to certify that they have policies and procedures to evaluate the likelihood of repayment and that they have followed such policies and procedures when determining the adequacy of the collateral and attributes of the borrowers of the loans that they purchase. These certifications are similar to those required of depositors with respect to QRMs and other qualifying asset classes. The agencies believe these modifications will reduce concerns about risks and challenges that commenters asserted would be faced in connection with the requirement that there be representations that the loans meet the rule's criteria. The agencies also note that the reference to ''ensuring'' that loans are CLO-eligible loans should be interpreted in a manner similar to such reference in this Supplementary Information with respect to QRMs and other qualifying asset classes.

As the agencies noted in the reproposal, the lead arranger option for open market CLOs is intended to allocate risk retention to the parties that originate the underlying loans and that likely exert the greatest influence on how the loans are underwritten, which is an integral component of ensuring the quality of assets that are securitized. Subject to considering certain factors, section 15G permits the agencies to allow an originator (rather than a sponsor) to retain the required amount of credit risk and to reduce the amount of credit risk required of the sponsor by the amount retained by the originator.[187] In developing the

[184] *See, e.g., Monetary Policy Report,* at 1–2.

[185] *See, e.g.,* Leveraged Lending Guidance at 17771 (''[A] poorly underwritten leveraged loan that is pooled with other loans or is participated with other institutions may generate risk for the financial system.''); *Shared National Credits Program: 2013 Review* at 8 (''Poorly underwritten or low quality leveraged loans, including those that are pooled with other loans or participated with other institutions, may generate risks for the financial system.'').

[186] The Commission has prescribed the disclosure of LEI in other rulemakings. *See, e. g.,* Nationally Recognized Statistical Rating Organizations; Final Rule, 79 FR 55078 (Sept. 15, 2014) and Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF; Final Rule, 76 FR 71128 (Nov. 16, 2011).

[187] 15 U.S.C. 78o–11(c)(G)(iv), (d) (permitting the Commission and Federal banking agencies to allow

proposed lead arranger option, the agencies considered the factors set forth in section 15G(d)(2) and concluded that it is consistent with the purposes of the statute to allow lead arrangers of open market CLOs to satisfy the risk retention requirement.[188]

The agencies considered the commenters' views that the option will not be widely adopted by lead arranger banks, but the agencies believe the option provides additional flexibility for lead arranger banks and non-banks and therefore may reduce disruption to the market. The agencies also believe that this option for open market CLOs will meaningfully align the incentives of the party most involved with the credit quality of these loans—the lead arranger—with the interests of investors. Commenters raised concerns that banks would likely not want to retain risk without being allowed to hedge or transfer that risk due to concern about criticism from regulators. However, the agencies note that these concerns were not raised for balance sheet CLOs where banks would be required similarly to retain a portion of the loans' risk without selling or transferring that retained risk. In addition, to the extent the comments referred to supervisory standards, the Federal banking agencies note that supervisors take into account many considerations when reviewing loan portfolios, including applicable regulations and guidance regarding underwriting and risk management. Alternatively, incentives would be placed on the CLO manager to monitor the credit quality of loans it securitizes, if it retains risk under the standard risk retention option.

For the reasons discussed above, open market CLO managers clearly fall within the statutory definition of ''securitizer'' in Section 15G and therefore are subject to the risk retention requirement. The agencies also believe that subjecting open market CLOs and their managers to the risk retention requirement is within their authority and consistent with the purposes of section 15G. The agencies believe the final rule places risk retention responsibility on the parties most capable of ensuring and monitoring the credit quality of the assets collateralizing open market CLOs—the CLO manager or the lead arranger. Further, the agencies believe these two options provide sufficient flexibility to avoid significant disruptions to the CLO and credit markets.

8. Municipal Bond ''Repackaging'' Securitizations

a. Overview of the Reproposal and Public Comments

Several commenters on the original proposal requested that the agencies exempt municipal bond repackaging securitizations from risk retention requirements, the most common form of which are often referred to as ''tender option bonds.'' [189] In order to reflect and incorporate the risk retention mechanisms currently implemented by the market, the reproposal included two additional risk retention options for certain municipal bond repackagings. The proposed rule closely tracked certain requirements for these repackagings, outlined in IRS Revenue Procedure 2003–84, that are relevant to risk retention.[190] Specifically, in the revised proposal, the agencies proposed additional risk retention options for municipal bond repackagings issued by a ''qualified tender option bond entity,'' which would be defined as an issuing entity of tender option bonds in which:

- Only two classes of securities are issued: a tender option bond and a residual interest;
- The tender option bond qualifies for purchase by money market funds under Rule 2a–7 under the Investment Company Act of 1940; [191]
- The holder of a tender option bond has the right to tender such bonds to the issuing entity for purchase at any time upon no more than 30 days' notice; [192]
- The collateral consists solely of municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and servicing assets, and all the municipal securities have the same municipal issuer and the same underlying obligor or source of payment;
- Each of the tender option bond, the residual interest and the underlying municipal security are issued in compliance with the Internal Revenue Code of 1986, as amended (the ''IRS Code''), such that the interest payments made on those securities are excludable from the gross income of the owners;
- The issuing entity has a legally binding commitment from a regulated liquidity provider to provide 100 percent guarantee or liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds; [193] and
- The issuing entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003–84, as amended or supplemented from time to time.

Under the reproposal, the sponsor of a qualified tender option bond entity could satisfy its risk retention requirements by retaining an interest that, upon issuance, would meet the requirements of an eligible horizontal residual interest but that, upon the occurrence of a ''tender option termination event'' as defined in section 4.01(5) of IRS Revenue Procedure 2003–84, as amended or supplemented from time to time, would meet requirements of an eligible vertical interest.[194]

the allocation of risk retention from a sponsor to an originator).

[188] 15 U.S.C. 78o–11(d)(2). These factors are whether the assets sold to the securitizer have terms, conditions, and characteristics that reflect low credit risk; whether the form or volume of transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the securitizer; and the potential impact of risk retention obligations on the access of consumers and business to credit on reasonable terms, which may not include the transfer of credit risk to a third party.

[189] As described by one commenter, a typical tender option bond transaction consists of the deposit of a single issue of highly rated, long-term municipal bonds in a trust and the issuance by the trust of two classes of securities: floating rate, puttable securities (the ''floaters''), and an inverse floating rate security (the ''residual''). The holders of floaters have the right, generally on a daily or weekly basis, to put the floaters for purchase at par, which put right is supported by a liquidity facility delivered by a highly rated provider and causes the floaters to be a short-term security. The floaters are in large part purchased and held by money market mutual funds. The residual is held by a longer term investor (bank, insurance company, mutual fund, hedge fund, etc.). The residual investor takes all of the market and structural risk related to the tender option bond structure, with the floaters investors only taking limited, well-defined insolvency and default risks associated with the underlying municipal bonds, which risks are equivalent to those associated with investing in such municipal bonds directly.

[190] Revenue Procedure 2003–84, 2003–48 I.R.B. 1159.

[191] This requirement is in section 10 of the final rule (definition of ''tender option bond'').

[192] This requirement is in section 10 of the final rule (definition of ''tender option bond'').

[193] The final rule defines a regulated liquidity provider as a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); a bank holding company (as defined in 12 U.S.C. 1841) or a subsidiary thereof; a savings and loan holding company (as defined in 12 U.S.C. 1467a) provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k) or a subsidiary thereof; or a foreign bank (or a subsidiary thereof) whose home country supervisor (as defined in section 211.21 of the Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, provided the foreign bank is subject to such standards.

[194] Section 4.01(5) of IRS Revenue Procedure 2003–84 defines a tender option termination event as: (1) a bankruptcy filing by or against a tax-exempt bond issuer; (2) a downgrade in the credit-rating of a tax-exempt bond and a downgrade in the credit rating of any guarantor of the tax-exempt bond, if applicable, below investment grade; (3) a payment default on a tax-exempt bond; (4) a final judicial determination or a final IRS administrative determination of taxability of a tax-exempt bond for

Continued

Under the reproposal, the sponsor of a qualified tender option bond entity could also satisfy its risk retention requirements by holding municipal securities from the same issuance of municipal securities deposited in the qualified tender option bond entity, the face value of which retained municipal securities would be equal to 5 percent of the face value of the municipal securities deposited in the qualified tender option bond entity.

The proposed prohibitions on transfer and hedging set forth in section 12 of the reproposal applied to the holder of a residual interest in, as well as any municipal securities retained by the sponsor of, a qualified tender option bond entity, if those interests were held in satisfaction of the sponsor's risk retention requirements under section 10 of the reproposal.

The reproposal also would have allowed the sponsor of a qualified tender option bond entity to satisfy its risk retention requirements under subpart B of the proposed rule using any other risk retention option in the reproposal, provided the sponsor meets the requirements of that option.

The agencies received many comments regarding the proposed tender option bond options. Most of the comments requested an exemption from risk retention for tender option bonds and, in the absence of an exemption, recommended either technical clarifications or adjustments to the proposed options for tender option bonds to cover a broader range of transaction structures.

Several commenters recommended that the final rule exclude issuance of tender option bonds from the risk retention requirements for a variety of reasons, including:

- The originate-to-distribute model that poses moral hazard risks in certain securitization transactions is not present in a tender option bond program;
- The tender option bond structure does not create information gaps for investors because tender option bond programs do not involve pooling large numbers of unrelated assets;
- The underlying bonds in a tender option bond structure generally are from one original issuance with the same issuer and borrower/obligor;
- The fund that selects the municipal bond to be deposited into a tender option bond structure retains virtually all of the risk related to such municipal bonds, and the tender option bond structure provides liquidity that is not found with typical asset-backed security products; and
- The industry generally does not define tender option bonds as structured finance products or asset-backed securities.

Commenters urging exclusion of tender option bonds from the risk retention requirements also stated that the current tender option bond market provides municipal issuers with access to a diverse investor base and a more liquid market, and subjecting tender option bonds to the risk retention requirements would significantly increase the costs of tender option bond programs and adversely affect the state and local governments that indirectly receive funding through these programs. They also commented that applying the risk retention rules to these structures would decrease the availability of tax-exempt investments in the market for money market funds, which are continuing to face limited investment options due to constraints imposed by Rule 2a–7 under the Investment Company Act.

A few commenters proposed that a sponsor of tender option bonds could satisfy its risk retention requirements if the residual interest holder provides, either directly or indirectly through an affiliate (i) 100 percent liquidity coverage on the floaters, (ii) a binding reimbursement obligation to the provider of the 100 percent liquidity coverage, or (iii) 100 percent credit enhancement on the underlying municipal securities. A few commenters took the position that any residual interest in any tender option bond structure should qualify as a risk retention option under the rule if the residual interest is held by an unaffiliated entity that agrees to subordinate its right to payment to the floater holders and the liquidity provider until the occurrence of a tender option termination event.

One commenter recommended broadening the exemption relating to asset-backed securities issued or guaranteed by a state or municipal entity to include securities collateralized by such exempt securities. Several commenters proposed that only municipal bond repackaging transactions with initial closing dates after the applicable effective date of the rule be subject to the risk retention requirements.

Other commenters advocated for a broader tender option bond risk retention option that would include most or all currently existing tender option bond programs, including those that issue tender option bonds with a notice period for tender of up to 397 days, tender option bond programs that hold assets other than tax-exempt municipal securities and servicing assets,[195] tender option bond programs that hold securities issued by more than one issuer,[196] and tender option bond programs in which the required retained interest is held by multiple beneficial owners, so long as all such owners are managed by a common regulated entity.[197]

Several commenters suggested technical clarifications, adjustments and corrections, including: The definition of qualified tender option bond entity should clarify the requirements with respect to the liquidity guarantee;[198] the requirement that tender option bonds be eligible securities under Rule 2a–7 under the Investment Company Act should be removed because it is unnecessary in the risk retention context; the definition of tender option bond should be revised so that the purchase price is par or face value plus accrued interest; the definition of qualified tender option bond entity should require that the tender right be supported by a liquidity facility or guarantee, except upon the occurrence of specified tender option termination events, and that such liquidity facility or guarantee be enforceable against the entity obligated to support or guarantee the purchase of the bonds upon tender; and the agencies should provide more specific guidance on how the disclosure

Federal default on the underlying municipal securities and credit enhancement, where applicable; (5) a credit rating downgrade below investment grade; (6) the bankruptcy of the issuer and, when applicable, the credit enhancer; or (7) the determination that the municipal securities are taxable.

[195] One commenter explained that other qualifying assets should include taxable municipal securities, preferred stock of registered closed-end investment companies that primarily invest in municipal securities, tender option bonds or tender option bond residual interests that are already issued and outstanding, and custodial receipts representing beneficial interests in any of the foregoing. A second commenter's alternative proposal includes tender option bond programs that hold taxable municipal securities and ''securities evidencing a beneficial ownership interest in municipal securities.'' A third commenter's alternative proposal included tender option bond programs for which the ''underlying collateral consists solely of tax-exempt assets or beneficial interests in such assets.''

[196] One commenter explained, in limited instances, assets held by tender option bond trusts consist of municipal securities from different issues from the same issuer or of more than one issuer.

[197] One commenter explained that this allocation is common practice in large fund complexes, and broadening this definition would not change the alignment of interests of the trust holders. Another commenter requested that the agencies allow multiple investment companies to satisfy the sponsor risk retention requirements.

[198] One commenter explained that the liquidity facility in a tender option bond program is typically structured as a credit enhancement of the underlying assets and not of the floaters themselves.

requirements would apply to tender option bonds.[199]

A few commenters expressed concern that the option to retain the residual interest only if it otherwise qualified as an eligible horizontal residual interest before, and an eligible vertical interest after, the occurrence of a tender option termination event was inconsistent with the partnership tax analysis used to pass through the tax-exempt interest on the bonds because the residual interest in a tender option bond structure is not legally subordinated at any time. However, another commenter stated that a residual interest is substantially equivalent to an eligible horizontal residual interest prior to the occurrence of a tender option termination event and an eligible vertical interest after a tender option termination event because (i) prior to the occurrence of a tender option termination event, the residual holder bears all the market risk, and (ii) after a tender option termination event, any credit losses are shared pro rata between the floaters and the residuals.

As part of a broader alternative definition for a qualified tender option bond entity, it was suggested that the retained risk in a qualified municipal repackaging entity should be either a residual or legally subordinate ABS interest equal to at least 5 percent of the face value (or fair market value, if no face value is available) of the assets of the entity at closing.

A group of commenters suggested that, if the agencies do not provide a full exemption for tender option bonds, the rule should state that retaining a residual interest in a qualified tender option bond entity equal to 5 percent of the fair value (determined as of the date of deposit) of the deposited assets should satisfy the risk retention requirements, without regard to the requirements applicable to eligible horizontal residual interest or eligible vertical interest requirements.

Other commenters recommended that the agencies permit the sponsor or the residual holder to purchase and retain a residual interest with an upfront cash investment value equal to 5 percent of the initial market value of the municipal securities in the tender option bond program. In addition, commenters asked that the rule allow a sponsor to aggregate the amount of a tender option bond residual interest it holds, with the municipal securities it directly holds, as of the date of deposit, in determining its risk retention requirement.

It was also suggested that the value of the collateral posted by a residual holder for a liquidity facility should be recognized, and that the residual holder's interest should be calculated as the sum of (a) the face amount of the residual certificate and (b) the market value of the collateral posted by the residual to secure the liquidity facility.

In terms of valuing the residual interest, one commenter suggested that the 5 percent market value retention amount be calculated at the time of the purchase of the municipal bond or the issuance of securities, to better conform to common industry practice and the realities of the tender option bond program, if the agencies decide not to exempt tender option bonds. This commenter explained that it would be impractical and costly to constantly monitor any fluctuation in the market value of the municipal bonds, and that no adjustments should have to be made if, during the life of the tender option bond trust, the market value of those bonds fluctuates above or below the market value that is initially calculated.

Several commenters requested that the agencies permit a party other than the sponsor of the issuing entity with respect to tender option bonds to be the risk retainer. Commenters stated that such a party may include a third-party investor that selects the underlying asset for the transaction and obtains the primary financing benefit of the structure, the funds or other investors that purchase residuals in the tender option bond trust to satisfy the sponsor's risk retention obligations as third-party purchasers, and a third-party investor with respect to tender option bond programs that are made available by sponsors and used by such third-party investors.

A few commenters requested that the final rule confirm that the ''sponsor'' is the bank that creates the tender option bond program. Commenters explained that the residual holders do not perform any of the traditional functions of a sponsor. One commenter claimed that deeming the funds that purchase residuals to be the ''sponsors'' for purposes of risk retention would have implications under other rules that use the term ''sponsor,'' including Rule 2a–7 under the Investment Company Act and proposed Securities Act Rule 127B.

In connection with the prohibition on hedging in the reproposal, which prohibits hedges that are ''materially related to the credit risk'' of the tender option bond residual interests and securitized assets, a group of commenters requested that the agencies clarify the meaning of that restriction to ensure that sponsors can manage the risks associated with up to 95 percent of the assets held by a tender option bond program. It was also requested that the agencies exclude from the hedging prohibition: (i) risk reducing and other transactions with regard to the underlying municipal security that are entered into by the sponsor prior to the establishment of the municipal bond repackaging structure, and (ii) transactions between the sponsor or its affiliates and an unrelated third party where the purpose of such transaction is to provide financing to such unrelated third party for such municipal securities on connection with a municipal bond repackaging structure.

b. Final Rule

After considering carefully the comments received on the reproposal as well as the purpose and language of section 15G of the Exchange Act, the agencies have adopted in the final rule the proposed tender option bond options with some modifications. In response to specific commenter concerns, the final rule incorporates certain technical clarifications and adjustments.

The final rule does not provide an exemption from risk retention requirements for sponsors of issuing entities with respect to tender option bonds. The agencies continue to believe that tender options bonds are asset-backed securities under the definition in section 15G because they are securities collateralized by self-liquidating financial assets and the holders of the securities receive payments that depend primarily on cash flow from the securitized assets.[200] Therefore, the sponsors of the issuing entities with respect to tender option bonds are subject to section 15G and the credit risk retention rules.

Consistent with the treatment of sponsors of other asset-backed securities, the holder of risk retention in connection with the issuance of tender option bonds may divide the ABS interests or tax-exempt municipal securities required to be retained under the final rule among its majority-owned affiliates, but may not do so among unrelated entities that are managed by the sponsor or managed by an affiliate of the sponsor. Accordingly, the sponsor of a tender option bond issuance under the rule may not sell the ABS interests

[199] One commenter asked that the agencies clarify that the disclosure requirements applicable to the sponsor of a qualified municipal repackaging entity be limited to: (i) the name and form of organization of the qualified municipal repackaging entity, (ii) a description of the form and material terms of the retained interest, (iii) whether the qualified municipal residual interest is held by the sponsor or a qualified residual holder, and (iv) a description of the face value or fair value of the qualified municipal residual interest or the municipal securities that are separately retained.

[200] 15 U.S.C. 78o–11(a).

required to be retained under the rule to a fund it manages unless such fund is a majority-owned affiliate of the sponsor. Otherwise, the credit risk associated with holding the ABS interest will be transferred to the investors in the fund that purchased those ABS interests, which would undermine the purpose and intent of the statute.

The agencies believe that, with respect to some issuances of asset-backed securities, it is possible that more than one party could meet the definition of sponsor in the rule.[201] With respect to those issuances, it is the responsibility of the transaction parties to designate which party is the sponsor and that party is then subject to the requirements of the risk retention rules.[202] The agencies note that various commenters requested that the agencies designate the bank that arranges and organizes the issuance of tender option bonds or the party that owns the residual interest as the sponsor. Regarding such requests, the agencies note that the party required to comply with the risk retention rules with respect to a tender option bond issuance is the party or parties that meet the definition of ''sponsor'' in the rule[203] and, depending on the specific facts and circumstances of the issuance and how the parties structure the transaction, either the arranging bank or the residual holder could be designated as the sponsor in accordance with the final rule.[204]

The purpose of the tender option bond risk retention options was to address existing market practice for traditional tender option bond issuances that are specifically structured such that the interest payments made on those securities are excludable from the gross income of the owners in the same way that the interest on the underlying municipal securities is excludable. Certain commenters suggested that the requirement that a residual interest in a tender option bond structure meet the requirements of an eligible horizontal residual interest before, and an eligible vertical interest after, the occurrence of a tender option termination event was inconsistent with the partnership tax analysis required to be used to ensure the pass-through treatment of the tax-exempt interest on the tender option bonds and tender option bond residuals. The agencies acknowledge that some asset-backed securities are not legally structured as debt and, in order to address this, the reproposal included and the final rule adopts a definition of ''collateral'' which explicitly applies ''irrespective of the legal structure of issuance'' and includes ''fractional undivided property interests in the assets or other property of the issuing entity, or any other property interest in such assets or other property.'' The agencies believe that a residual interest in a qualified tender option bond entity would meet the requirements of an eligible horizontal residual interest before, and an eligible vertical interest after, the occurrence of a tender option termination event if: (i) prior to the occurrence of a tender option termination event, the residual holder bears all the market risk associated with the underlying tax-exempt municipal security; and (ii) after the occurrence of a tender option termination event, any credit losses are shared pro rata between the tender option bonds and the residual interest.

The agencies do not agree with comments suggesting that tender option bond structures with an initial closing date prior to the date on which rule becomes effective should be exempt from the rule or ''grandfathered.'' Consistent with the statute, the agencies believe that the sponsor of issuances of asset-backed securities after the applicable effective date should be subject to risk retention requirements regardless of when the structure that issues those securities was formed. A tender option bond structure may issue additional asset-backed securities on multiple dates and may often substitute collateral. These features, and the broad exemptive relief requested by commenters, would allow for potentially limitless issuances of asset-backed securities which would not be subject to any risk retention requirements. Requiring tender option bond structures to meet the credit risk retention requirements regardless of their closing date is consistent with treatment of other securitization structures that exist prior to and continue to issue ABS interests after the applicable effective date of the rule, such as ABCP conduits and revolving pool securitizations.

The agencies have determined not to revise the definition of qualified tender option bond entity to expand the types of assets such structures can hold.[205] The tender option bond option in section 10 of the final rule is narrowly drawn to address risk retention practices in existing market structures and limit potential for abuse that could result from a broad exemption based entirely on structural features. Accordingly, under the final rule, sponsors of issuances of asset-backed securities that are subject to risk retention and that are collateralized by assets other than tax-exempt municipal securities[206] with the same municipal issuer and the same underlying obligor or source of payment will need to comply with the requirements of one of the other credit risk retention options. As a result, the final rule does not permit a qualified tender option bond entity to hold a residual interest in another tender option bond program or preferred stock in a closed-end investment company that invests in municipal securities.

The agencies have adopted the definition of tender option bond with one change and a clarification. After considering comments, the agencies are permitting tender option bonds with a notice period of up to 397 days to qualify for the specialized option. The agencies note that this time frame corresponds to the maximum remaining

[201] The designation of a party as a sponsor of an issuance of asset-backed securities for purposes of the final rule is not related to whether or not such party is the sponsor for purposes of other rules and regulations, including for example Rule 2a–7 under the Investment Company Act (including the discussion of sponsor in the Money Market Fund Reform, 79 FR at 47876) or section 13G of the Bank Holding Company Act (Volcker Rule). Whether or not a party is the sponsor under a particular rule or regulation is determined by reference to that rule or regulation and the related legal authority.

[202] While this concern was specifically raised by commenters in the context of tender option bonds, the agencies note that it is possible that any issuance of asset-backed securities could have more than one party that meets the definition of sponsor, and the analysis in this section would apply regardless of the securitization structure or securitized assets.

[203] As noted in the discussion of the definition of ''securitizer'' with respect to CLOs in Part III.B.7 of this Supplementary Information, the agencies do not believe that a sponsor is required to have had legal ownership or possession of the assets that collateralize an issuance of asset-backed securities.

[204] Nothing in the final rule prohibits the use by a sponsor of agents in order to meet the sponsor's obligations under the final rule, including the use of third-party service providers, such as an underwriter or remarketing agent to distribute required disclosures to investors in a timely manner. However, the sponsor remains liable for compliance with its obligations under the final rule.

[205] As proposed, the final rule requires that the collateral for a qualified tender option bond entity to consist only of servicing assets and tax exempt municipal securities.

[206] The agencies believe that a beneficial interest in a tax-exempt municipal security may be held by a qualified tender option bond entity, but only if such beneficial interest is a pass-through and pro rata interest in the underlying tax-exempt municipal security. Therefore, a qualified tender option bond entity will be permitted to hold an asset-backed security collateralized by a tax-exempt municipal security only if such asset-backed security is a pass-through and pro rata interest in the underlying tax-exempt municipal security and the cash flows supporting such asset-backed security are not tranched. A qualified tender option bond entity will not be permitted to hold credit default swaps referencing municipal obligations or tranched asset-backed securities, such as tender option bonds.

maturity of securities allowed to be purchased by money market funds under Rule 2a–7 under the Investment Company Act. Consistent with the reproposal, the final rule requires that the tender option bond have features which entitle the holder to tender the bond for a purchase price equal to the approximate amortized cost of the security, plus accrued interest, if any. The agencies believe that, in the context of a tender option bond, ''amortized cost plus accrued interest'' typically equals face value or par value plus accrued interest.

In response to commenters' suggestions for valuation methodologies to determine the fair value of a residual interest in a tender option bond issuance, to the extent that a particular valuation methodology is appropriate in the fair value measurement framework under GAAP to determine the fair value of a residual interest in a tender option bond issuance, then such valuation methodology would be permitted under the final rule to determine the fair value of a retained residual interest in a tender option bond issuance. After careful consideration of commenters' suggestions for alternative valuation methodologies, the agencies do not believe there is a compelling reason to treat tender option bond residual interests differently from any other eligible horizontal residual interest, and the final rule requires that the sponsor of a tender option bond calculate the fair value of the residual interest.

Consistent with the reproposal, the final rule requires the amount of tax-exempt municipal securities held by the sponsor or a majority-owned affiliate of the sponsor outside of the qualified tender option bond entity to be determined by reference to the face value of the municipal securities deposited in the qualified tender option bond entity. For instance, if the face value of the tax-exempt municipal securities deposited into a qualified tender option bond entity is $100 million, the sponsor or a majority-owned affiliate of the sponsor will be required to hold tax-exempt municipal securities, identical to those deposited in the tender option bond entity with respect to legal maturity and coupon, with a face value of $5 million in order to satisfy its requirements under the final rule. The agencies continue to believe that this approach is an accurate and easily verifiable means of calculating 5 percent risk retention because the retained municipal securities are identical to and fungible with the deposited municipal securities. This approach should help to minimize operational costs, administrative burdens and additional costs.

Regarding commenters' requests that the agencies give a sponsor of a tender option bond credit for cash held as collateral for the liquidity agreement, the final rule does not allow such cash collateral credit to be credited toward satisfaction of the risk retention requirements unless the cash is held in an account that meets the requirements for an eligible horizontal cash reserve account. This result is consistent with the approach regarding cash reserves connected to issuances of asset-backed securities under other options in the final rule.

Regarding commenters' requests for certain adjustments to, and clarification of, the hedging prohibitions with respect to the tender option bond risk retention options and with respect to tender option bond issuances generally, the agencies believe there is no reason to treat sponsors of tender option bond structures any differently from sponsors of other asset-backed securities issuances. Therefore, subject to provisions of the rule regarding permitted hedges and the agencies' interpretation of the hedging restrictions discussed elsewhere in this preamble, the agencies believe that a hedging transaction entered into prior to the establishment of the tender option bond trust should be subject to the hedging prohibition. Permitting such hedges would allow the sponsor of a tender option bond issuance to hedge its credit risk exposure to the tender option bond issuance simply by hedging its expected exposure to the underlying assets prior to the initial issuance of the tender option bonds, effectively eliminating the hedging prohibition. Similarly, regarding commenters' requests for an exclusion for hedging transactions entered into between the sponsor of a tender option bond issuance or its affiliates and an unrelated party where the purpose of such transaction is to provide financing to such third party for the municipal securities to be deposited into a tender option bond structure, the agencies believe that the holder of retained credit risk should not be permitted to hedge its exposure to the retained credit risk. This approach is consistent with the treatment of all other credit risk retention options in the final rule. The agencies further believe that consideration of the purpose and intent of transactions that effectively hedge or reduce the risks associated with credit risk retention would undermine the hedging prohibition and the purpose and intent of section 15G.

Regarding commenters' requests to clarify the phrase ''materially related to the credit risk'' in the hedging prohibition, the agencies expect the sponsor of a tender option bond issuance to make that determination based on the relevant facts and circumstances. To the extent that the sponsor of a tender option bond issuance holds ABS interests or tax exempt municipal securities in excess of the minimum requirement under the final rule, then such sponsor would be permitted to hedge such excess interests, but must hold ABS interests or tax exempt municipal securities unhedged in an amount that satisfies the minimum risk retention requirements applicable to such retained risk.

The final rule does not include the requirement that the tender option bonds issued by a qualified tender option entity be eligible assets under Rule 2a-7 under the Investment Company Act. The agencies were persuaded by commenters that analyzing compliance with such a requirement would involve an assessment of information that might not be available to sponsors and was unnecessary given the other conditions to the sponsors' ability to rely on the risk retention options specific to tender option bonds.

The agencies are adopting the proposed disclosure requirements for qualified tender option bonds with some clarification and a minor addition. Based on comments, the agencies have added specific disclosure requirements for sponsors that retain municipal securities outside of the qualified tender option bond entity that are limited to the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained by the sponsor or its majority-owned affiliates and subject to the hedging prohibition.

Also, in response to commenters' requests for clarification of the disclosure obligations of a sponsor of a tender option bond issuance, the agencies believe that the sponsor of a tender option bond that holds a residual interest that meets the requirements of section 10(c) of the final rule should provide the disclosures required in section 4(c) of the final rule for both an eligible horizontal residual interest and an eligible vertical interest.

Under the final rule, the issuing entity of a qualified tender option bond must have a legally binding commitment from a regulated liquidity provider to provide 100 percent liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds.[207] In response to commenters' requests for certain clarifications with respect to the required liquidity coverage, the agencies recognize that the liquidity coverage may not be enforceable against the regulated liquidity provider upon the occurrence of a tender option termination event. Liquidity coverage subject to this condition would nevertheless satisfy the liquidity coverage requirement in the final rule.

As commenters requested, the final rule also permits the sponsor of a qualified tender option bond entity to combine the tender option bond risk retention options with each other and the other risk retention options under subpart B of the final rule. In any such case, the sum of the percentages of risk retention held under each option and measured in accordance with that option must total at least five. For example, if a sponsor securitizes $100 million face value of bonds in a qualified tender option bond entity and holds bonds outside the tender option structure whose face value is $3 million or 3 percent of the face value of the bonds in the qualified tender option bond entity, it must hold a residual interest in the structure that has a fair value of at least 2 percent of the fair value of all ABS interests issued by the structure (the 3 percent plus the 2 percent when aggregated equal 5 percent of the fair value). The final rule does not require a minimum amount of risk retention in any specific risk retention option, only that the sum of the percentages of risk retention totals at least 5 percent of the fair value. The agencies believe that permitting this flexibility better enables sponsors of tender option bonds to use the options afforded under the final rule.

The final rule requires the sponsor to calculate the fair value of all ABS interests issued upon an issuance of tender option bonds that increases the face amount of tender option bonds then outstanding. The agencies believe that this approach appropriately balances the costs of determining the fair value of the tender option bond residual interest with the statutory requirement for risk retention. This means that a sponsor of an issuance of tender option bonds that would like to receive credit under the final rule for retaining a residual interest in the qualifying tender option bond entity would calculate the fair value of the residual interest in the qualifying tender option bond entity in connection with the initial issuance of tender option bonds in accordance with section 10 of the final rule and would not be required to recalculate the fair value of such residual interest unless either the face value of tender option bonds outstanding exceeds the face value of bonds initially issued.

C. Allocation to the Originator

1. Overview of Proposal and Public Comment

As a general matter, the original proposal and reproposal were structured so that the sponsor of a securitization transaction would be solely responsible for complying with the risk retention requirements established under section 15G of the Exchange Act and the implementing regulations, consistent with that statutory provision. However, subject to a number of considerations, section 15G authorizes the agencies to allow a sponsor to allocate at least a portion of the credit risk it is required to retain to the originator(s) of securitized assets.[208] Accordingly, subject to conditions and restrictions, the reproposal (like the original proposal) would have permitted a sponsor to reduce its required risk retention obligations in a securitization transaction by the portion of risk retention obligations assumed by one or more of the originators of the securitized assets.

When determining how to allocate the risk retention requirements, the agencies are directed to consider whether the assets sold to the sponsor have terms, conditions, and characteristics that reflect low credit risk; whether the form or volume of the transactions in securitization markets creates incentives for imprudent origination of the type of loan or asset to be sold to the sponsor; and the potential impact of the risk retention obligations on the access of consumers and businesses to credit on reasonable terms, which may not include the transfer of credit risk to a third party.[209]

In the reproposal, the agencies proposed a framework that would have permitted a sponsor of a securitization to allocate a portion of its risk retention obligation to an originator that contributed a significant amount of assets to the underlying asset pool. The agencies endeavored to create appropriate incentives for both the securitization sponsor and the originator(s) to maintain and monitor appropriate underwriting standards without creating undue complexity, which potentially could mislead investors and confound supervisory efforts to monitor compliance. Importantly, the reproposal would not have required allocation to an originator. Therefore, it did not raise the types of concerns about allocation of burden and credit availability that might arise if certain originators, such as mortgage brokers or small community banks (that may experience difficulty obtaining funding to retain risk positions), were required to fulfill a sponsor's risk retention requirement.

The allocation to originator option in the reproposal was designed to work in tandem with the standard risk retention option. Additionally, the reproposal would have permitted a securitization sponsor to allocate a portion of its risk retention obligation to any originator of the underlying assets that originated at least 20 percent of the underlying assets in the pool. The amount of the retention interest held by each originator that was allocated credit risk in accordance with the reproposal was required to be at least 20 percent, but not in excess of the percentage of the securitized assets it originated. The originator would have been required to hold its allocated share of the risk retention obligation in the same manner as would have been required of the sponsor, and subject to the same restrictions on transferring, hedging, and financing the retained interest. Thus, for example, if the sponsor satisfied its risk retention requirements by acquiring an eligible horizontal residual interest, an originator allocated risk would have been required to acquire a portion of that interest, in an amount not exceeding the percentage of securitized assets created by the originator. The sponsor's risk retention requirements would have been reduced by the amount allocated to the originator. The sponsor would have had to provide, or cause to be provided, to potential investors (and the appropriate regulators

[207] The final rule does not require any specific form of liquidity coverage. Provided that the liquidity coverage will cover an amount sufficient to pay 100 percent of the principal outstanding and interest payable on the tender option bonds, the final rule permits liquidity coverage structured as a guarantee, credit enhancement or credit support with respect to the underlying securities or the floaters or an irrevocable put option.

[208] As discussed above, 15 U.S.C. 78o–11(a)(4) defines the term ''originator'' as a person who, through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and who sells an asset directly or indirectly to a securitizer (*i.e.,* a sponsor or depositor).

[209] 15 U.S.C. 78o–11(d)(2). The agencies note that section 15G(d) appears to contain an erroneous cross-reference. Specifically, the reference at the beginning of section 15G(d) to ''paragraph (c)(1)(E)(iv)'' is read to mean ''paragraph (c)(1)(G)(iv)'', as the former paragraph does not pertain to allocation, while the latter is the paragraph that permits the agencies to provide for the allocation of risk retention obligations between a securitizer and an originator in the case of a securitizer that purchases assets from an originator.

upon request) the name and form of organization of any originator that will acquire and retain (or has acquired and retained) an interest in the transaction, including a description of the form, amount, and nature of the interest (*e.g.,* senior or subordinated), as well as the method of payment for such interest. Finally, the reproposal would have made the sponsor responsible for any failure of an originator to abide by the transfer, hedging, and financing restrictions included in the proposed rule.

Comments on the allocation to originator proposal focused on the 20 percent threshold for allocation, the requirement that an originator to which risk retention was allocated share pro rata in all of the losses allocated to the type of interest (*i.e.,* horizontal or vertical) it holds rather than only the losses on assets that it originated, and the definition of originator. Some of the commenters requested that the 20 percent minimum should be deleted and that it would hurt smaller originators while one commenter supported the limit and asserted that it protected smaller originators. Comments as to the required pro rata sharing by the originator included an analysis that because securitization tranches are developed so that tranche holders share *pari passu* in losses, it would cause unnecessary complexity to limit an originator's interests to the loans that it had originated. Finally, a commenter asserted that the definition of ''originator'' ought to include parties that purchase assets from entities that create the assets.

2. Final Rule

The agencies have carefully considered the concerns raised by commenters with respect to the reproposal on allocation to originators. For the reasons discussed below, the agencies have concluded that the changes to the reproposal suggested by the commenters are not necessary or appropriate. Therefore, the agencies are adopting the proposed allocation to originator provision with minor drafting corrections and changes, as discussed below.

The only modifications to this option from that proposed in the reproposal are a drafting correction and changes to the formulation in section 11(a)(1)(ii) of the rule of the limit on how much of its risk retention obligation a sponsor may allocate to an originator. These changes to section 11(a)(1)(ii) of the rule reflect that no fair value computation is required for a vertical interest (discussed above in Part III.B.1 of this Supplementary Information) and, consequently, that in certain circumstances the fair value of the retained interest as a percentage of all ABS interests issued in the securitization transaction may not be determined. This change to the text of section 11(a)(1)(ii) of the rule does not result in any substantive change to the allocation to originator provisions contained in the reproposal.

While section 11(a)(1)(iv) is unchanged from the reproposal, it should be noted that the amount that is required to be paid by the originator might need to be calculated differently from how this amount would have been calculated under the reproposal. In the event that the fair value of all ABS interests issued in a securitization transaction is not calculated, which would be the case if the sponsor opted for all of its required risk retention to be held as eligible vertical interests and one or more classes of ABS interests were not sold to investors, the amount by which the sponsor's risk retention is reduced by the sale of a portion thereof to an originator will not be determinable from the calculations required by section 4 of the rule. In this circumstance, the agencies would expect that the value of the retained portion of any unsold tranches for purposes of section 11 of the rule will be determined on a reasonable basis by the sponsor and the originator.

The agencies note that the reference in section 11(a)(1)(ii) of the rule to the interest retained by the sponsor refers to the amount of the interest required to be retained by the sponsor before giving effect to any sale to an originator. Similarly, the provision in section 11(a)(2) of the rule that a sponsor disclose the percentage of the interest sold to an originator is intended to require calculation of such percentage based on the sponsor's risk retention amount before any sale to an originator.

The rule, like the proposal, requires that an originator to which a portion of the sponsor's risk retention obligation is allocated acquire and retain eligible vertical interests or eligible horizontal residual interests in the same manner as would have been retained by the sponsor. As under the reproposed rule, this condition will require an originator to acquire horizontal and vertical interests in the securitization transaction in the same proportion as the interests originally to be retained by the sponsor. This requirement helps to align the interests of originators and sponsors, as both will face the same likelihood and degree of losses if the securitized assets begin to default. In addition, if originators were permitted to retain their share of the sponsor's risk retention obligation in a proportion that is different from the sponsor's mix of the vertical and horizontal interests, investor and regulatory monitoring of risk retention compliance could become very complex.

As under the reproposal, the rule requires a sponsor that uses an eligible horizontal cash reserve account and desires to allocate a portion of its risk retention obligations to an originator to allocate a portion of the interest the sponsor holds in such account to the originator. Such allocation may be effected by any method that results in the sponsor and each originator to which any retention is allocated sharing, directly or indirectly, on a *pari passu* basis in one or more eligible horizontal residual accounts. For example, (1) the originator may deposit into the sponsor-established account funds in the amount of the originator's share of the sponsor's risk retention obligations, in replacement of a like amount of the funds originally deposited by the sponsor, or (2) the originator may create a separate horizontal reserve account in the amount of its share of the sponsor's risk retention obligations, in substitution for a like amount of funds in the sponsor's reserve account. If an originator establishes a separate account, such account must share *pari passu* with the sponsor's eligible horizontal reserve account (and any other originator's eligible horizontal reserve account) in amounts released to satisfy amounts due on ABS interests.

The rule does not modify the requirement that an originator to which a sponsor may sell a portion of its required risk retention must have originated at least 20 percent of the asset pool. As explained in the reproposal, by limiting this option to originators that originate at least 20 percent of the asset pool, the agencies seek to ensure that the originator retains risk in an amount significant enough to function as an actual incentive for the originator to monitor the quality of all the securitized assets (and to which it would retain some credit risk exposure). In addition, the 20 percent threshold serves to make the allocation option available only for entities whose assets form a significant portion of a pool and who, thus, ordinarily could be expected to have some bargaining power with a sponsor.

By restricting originators to holding no more than their proportional share of the risk retention obligation, the rule seeks to prevent sponsors from circumventing the purpose of the risk retention obligation by transferring an outsized portion of the obligation to an originator that may have been seeking to acquire a speculative investment. These requirements are also intended to reduce the rule's potential complexity and facilitate investor and regulatory monitoring.

The rule does not incorporate the commenter suggestion that an originator be allocated retention in only the loans that it originated. The operational burden on both securitization sponsors and federal supervisors to ensure that retention is held by originators on the correct individual loans would, for many different asset classes, be exceedingly high. Therefore, the rule requires that originators allocated a portion of the risk retention requirement be allocated a share of the entire securitization pool.

The rule does not modify the definition of originator from that set forth in the reproposal and does not include persons that acquire loans and transfer them to a sponsor. The agencies continue to believe that the definition of the term originator in section 15G [210] should not be interpreted to include such persons. Section 15G defines an originator to a person that ''through the extension of credit or otherwise, creates a financial asset.'' A person that acquires an asset created by another person would not be the ''creator'' of such asset.

Finally, while the final rule omits the proposed requirement that a sponsor disclose the dollar amount of the interests sold to originators because such amount may not always be calculated, the disclosure requirements of the sponsor under section 4 of the final rule remain applicable to the sponsor and should be construed to refer to the required interest originally retained by the sponsor, even where the sponsor sells some or all of its required retained interests to originators.

D. Hedging, Transfer, and Financing Restrictions

1. Overview of the Reproposal and Public Comment

Section 15G(c)(1)(A) provides that the risk retention regulations shall prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain with respect to an asset. Consistent with this statutory directive, the reproposal would have prohibited a sponsor from (i) transferring any interest or assets that it was required to retain under the rule to any person other than a majority-owned affiliate of the sponsor, (ii) hedging the credit risk the sponsor is required to retain under the rule, unless the hedge positions are expressly permitted or not materially related to the credit risk of the particular ABS interests or exposures required to be retained by the sponsor, or (iii) pledging as collateral for any obligation any interest or asset that the sponsor is required to retain, unless the pledge collateralizes an obligation with full recourse to the sponsor or a consolidated affiliate.

The agencies did not receive any comments directly addressing the financing restrictions in the reproposal. Several commenters addressed the hedging and transfer provisions.

While some commenters supported the proposed restrictions on hedging, others opposed the provisions as being overly restrictive, and certain commenters requested clarification as to the scope of the proposed restrictions. One commenter advocated a blanket exception from the hedging restriction for pool and asset level credit insurance reasoning that such insurance reduces credit risk for the benefit of all holders of ABS interests, and does not eliminate the retaining sponsor's exposure to credit risk or change the ''relative distribution of risk among interest holders.'' Another commenter expressed the view that issuers of securities collateralized by ''qualifying assets'' should be able to hold hedges, insurance policies and other forms of credit enhancement as discussed in Items 1114 and 1115 of the Commission's Regulation AB, and asserted that ''interest rate hedges, bond insurance policies, pool insurance policies and other forms of credit enhancement form an important component of many securitization structures and provide clear benefits to investors.''

Several commenters requested that the agencies clarify that the term ''servicing assets'' (which are generally permitted to be held by issuers) includes hedge instruments. One of these commenters asserted that the preamble to the reproposal indicated that the term was intended to be defined broadly and included ''interest rate and foreign currency risk'' hedges, but the definition of the term in the proposed regulation did not reflect that breadth. The commenter expressed concern that, without clarification, issuers that used other types of hedges would not be able to avail themselves of exemptions from risk retention, with the result that costs would be borne by investors (in the form of less credit enhancement) and borrowers (in the form of higher interest rates). Another commenter requested that permitted hedging activities include ''purchasing or selling a security or other financial instrument to protect or mitigate credit risk in servicing assets for the protection of all investors.'' This commenter requested that hedges to mitigate risk with respect to amounts due for services that are not financed as well as vehicle leases be allowed.

One commenter suggested that the agencies consider whether the restriction prohibiting the sponsor from transferring, selling, or otherwise encumbering its interest for a period of time after establishing the securitization entity may have the unintended consequence of creating a de facto agency relationship between the sponsor and the other investors in the securitization entity under GAAP. The commenter asserted that a de facto agency relationship between the sponsor and the other investors in a securitization entity results in a higher likelihood that the sponsor would be required to consolidate the securitization entity.

2. Final Rule

The agencies have carefully considered the comments received with respect to the reproposal's hedging, transfer, and financing restrictions, and for the reasons discussed below, do not believe that any significant changes to the reproposal's restrictions are necessary or appropriate. Accordingly, the final rule contains hedging, transfer, and financing restrictions that are substantially the same as those contained in the reproposal.[211]

The final rule prohibits a sponsor or any affiliate from hedging the credit risk the sponsor is required to retain under the rule or from purchasing or selling a security or other financial instrument, or entering into an agreement (including an insurance contract), derivative or other position, with any other person if: (i) Payments on the security or other financial instrument or under the agreement, derivative, or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor is required to retain, or one or more of the particular securitized assets that collateralize the asset-backed securities; and (ii) the security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the sponsor to the credit risk of one or more of the particular ABS interests or one or more of the particular

[210] 15 U.S.C. 78o–11(a)(4).

[211] The sunset on hedging and transfer restrictions is discussed in Part III.F of this Supplementary Information.

securitized assets that collateralize the asset-backed securities.[212]

As in the reproposal, because the agencies believe it would not be ''materially related'' to the particular interests or assets that the sponsor is required to retain, holding a security tied to the return of an index (such as the subprime ABX.HE index) is not a prohibited hedge so long as: (1) any class of ABS interests in the issuing entity that were issued in connection with the securitization transaction and that are included in the index represent no more than 10 percent of the dollar-weighted average of all instruments included in the index, and (2) all classes of ABS interests in all issuing entities that were issued in connection with any securitization transaction in which the sponsor was required to retain an interest pursuant to the rule and that are included in the index represent, in the aggregate, no more than 20 percent of the dollar weighted average of all instruments included in the index. Such permitted positions include hedges related to overall market movements, such as movements of market interest rates (but not the specific interest rate risk, also known as spread risk, associated with the ABS interest that is otherwise considered part of the credit risk), currency exchange rates, home prices, or the overall value of a particular broad category of asset-backed securities.

In response to comments, the agencies also note that they do not believe that the rule prohibits the retaining sponsor from benefiting from credit enhancements or risk mitigation products that are designed to benefit all investors in the securitization in which the sponsor is required to retain risk. For example, the retaining sponsor may benefit from private mortgage insurance provided that the proceeds of such insurance are subject to the priority of payments for all investors.

The agencies caution that a sponsor would not be in compliance with the rule if it were to engage in, direct or control a series of transactions designed to add credit enhancement to assets ultimately securitized by it in a manner that indirectly achieved what the sponsor is prohibited from doing directly. The agencies believe that the hedging and transfer prohibitions in the statute are intended to ensure that the sponsor retains meaningful credit exposure to the securitized assets rather than credit exposure to a third party. As a result, the agencies believe that the hedging prohibition would impose limits on a sponsor benefitting from asset-level or pool-level insurance that covered 100 percent of the credit risk of the securitized assets, unless the sponsor's right to recover insurance proceeds from such hedges is subordinated to the payment in full of all other investors.

A different approach is applicable when risk reducing transactions or instruments cover either the ABS interests required to be retained by the sponsor, such as bond insurance, or 100 percent of the credit risk of the securitized assets, such as municipal bond insurance. Under this approach, the retaining sponsor would be precluded from receiving distributions that, but for the proceeds from the insurance, would not be available for distribution to that retaining sponsor unless, at the time of distribution, all other amounts due at that time to be paid to all other holders of outstanding ABS interests have been paid in full. Accordingly, until all other holders of obligations issued as part of the securitization transaction are paid all amounts then due to them, a holder of an eligible vertical interest would not be permitted to benefit from bond insurance on a senior class or tranche and, thus, would be required to subordinate its interest in any bond insurance proceeds to the payment of all amounts due to all other ABS interests. Similarly, a sponsor would not be entitled to benefit from a pool insurance policy that references amounts payable to a specific tranche or class of ABS interest unless, at the time of distribution, all other ABS interests had been paid all amounts due to them at the time.

The agencies are clarifying that the liquidity support provided by a regulated liquidity provider in satisfaction of the requirements set forth in the tender option bond risk retention option described in section 10 of the final rule or in satisfaction of the requirements set forth in the ABCP risk retention option described in section 6 of the final rule is not subject to the prohibition on hedging and transfer.[213] In both cases, the liquidity support is an important aspect of the existing market practice and alignment of interests in these transactions. The agencies note that, to the extent that a sponsor of an ABCP conduit or tender option bond program is also the liquidity provider, a liquidity agreement or credit guarantee would not violate the prohibition on hedging because such an agreement would not hedge the sponsor's credit risk retention. Additionally, with respect to an eligible ABCP conduit, the originator-seller in its capacity as sponsor of the intermediate SPV is subject to the hedging prohibition and would remain exposed to the credit risk of the collateral supporting the ABS interests issued by the intermediate SPV.

As under the reproposal, because the agencies believe that they would not be ''materially related'' to the particular interests or assets that the sponsor is required to retain, hedges tied to securities that are collateralized by similar assets originated and securitized by other sponsors would not be prohibited. On the other hand, a security, instrument, derivative or contract generally would be ''materially related'' to the particular interests or assets that the sponsor is required to retain if the security, instrument, derivative or contract refers to those particular interests or assets or requires payment in circumstances where there is or could reasonably be expected to be a loss due to the credit risk of such interests or assets (*e.g.,* a credit default swap for which the particular interest or asset is the reference asset).

In response to comments requesting clarification as to whether servicing assets could be hedged, the agencies are of the view that cash equivalents that are servicing assets should be specifically limited so that they do not create additional risk for a securitization transaction and they should not require hedging.[214] As for whether servicing assets may include hedge instruments, the agencies note that interest rate and foreign currency hedges are not prohibited hedges under section 12 of the final rule. As noted earlier, the term ''servicing assets'' is similar to the definition of the term ''eligible assets'' under Rule 3a–7 of the Investment Company Act.

Regarding commenters' concerns that the rule's transfer and hedging restrictions may create a de facto agency relationship between the sponsor and the other investors in the securitization entity under GAAP, the Commission notes, and the other agencies concur, that a de facto agency relationship

[212] The two-part test requires that a position be both ''materially related to the credit risk'' and actually offset credit risk. These concepts are often interrelated and, if significant amounts of credit risk are offset, this may indicate a material relationship to the retained ABS interests.

[213] Because a liquidity facility is required for the ABCP option and the qualified tender option bond entity options, but does not itself constitute required risk retention, it is not subject to the transfer or hedging restrictions.

[214] One notable exception might arise for cash held in a currency different than the currency of obligation for the securitization, where the amount of currency and time to payment obligation are material from the standpoint of the securitization; however this foreign exchange risk is more commonly hedged at the securitized asset level.

under GAAP will not be created by the transfer, hedging, or financing restrictions in the final rule, and note that the definition of a de facto agency relationship in GAAP relates to an agreement between variable interest holders in an entity that restricts one variable interest holder from selling, transferring, or encumbering its interest in the entity without the prior approval of other variable interest holders. A de facto agency relationship does not exist solely as a result of a regulatory restriction imposed on an investor that prohibits its ability to transfer, sell, or otherwise encumber its interest in an entity. As such, the Commission confirms, and the other agencies concur, that the restriction in the final rule prohibiting the sponsor from transferring, selling, or otherwise encumbering its interest for a period of time after establishing the securitization entity does not create under GAAP a de facto agency relationship between the sponsor and the other investors in the securitization entity.

E. Safe Harbor for Certain Foreign-Related Securitizations

Like the original proposal, the reproposal included a ''safe harbor'' provision for certain securitization transactions with limited connections to the United States and U.S. investors.[215] The safe harbor was intended to exclude from the risk retention requirements transactions in which the effects on U.S. interests are sufficiently remote so as not to significantly impact underwriting standards and risk management practices in the United States or the interests of U.S. investors. Accordingly, reliance on the safe harbor is conditioned upon limited involvement by persons in the United States with respect to both securitized assets and the ABS interests sold in connection with the transaction. The safe harbor would not have been available for any transaction or series of transactions that, although in technical compliance with the conditions of the safe harbor, is part of a plan or scheme to evade the requirements of section 15G of the Exchange Act and these rules.

Under the reproposal, the risk retention requirement would not have applied to a securitization transaction if: (1) the securitization transaction is not required to be and is not registered under the Securities Act; (2) no more than 10 percent of the dollar value (or equivalent if denominated in a foreign currency) of all classes of ABS interests in the securitization transaction are sold or transferred to U.S. persons or for the account or benefit of U.S. persons;[216] (3) neither the sponsor of the securitization transaction nor the issuing entity is (i) chartered, incorporated, or organized under the laws of the United States, or a U.S. state, the District of Columbia, Puerto Rico, the Virgin Islands or any other possession of the United States (any such state, other jurisdiction or possession, a ''U.S. state''), (ii) an unincorporated branch or office (wherever located) of an entity chartered, incorporated or organized under the laws of the United States or any U.S. state, or (iii) an unincorporated branch or office located in the United States or any U.S. state (an ''unincorporated U.S.-located entity'') of an entity not chartered, incorporated, or organized under the laws of the United States, or a U.S. state; and (4) no more than 25 percent of the assets collateralizing the ABS interests sold in the securitization transaction were acquired by the sponsor or issuing entity, directly or indirectly, from (i) a majority-owned affiliate of the sponsor or issuing entity that is chartered, incorporated or organized under the laws of the United States or a U.S. state, or (ii) an unincorporated U.S.-located entity of the sponsor or issuing entity.

Commenters on the reproposal generally supported the existence of a safe harbor for certain foreign securitizations. A few commenters suggested increasing the 10 percent limit on the value of ABS interests permitted to be sold to or for the account of U.S. persons. These commenters also requested that the agencies clarify that the 10 percent limit applies only at the time of initial issuance and does not include secondary market transfers. Commenters also proposed to exclude from the 10 percent limitation (A) securitization transactions with a sponsor or issuing entity that is a U.S. person which makes no offers to U.S. persons and (B) issuances of asset-backed securities that comply with Regulation S of the Securities Act.

Several commenters requested that the rule provide for coordination of the rule's risk retention requirement with foreign risk retention requirements, including by permitting a foreign issuer to comply with home country or other applicable foreign risk retention rules. In this regard, comment was made that U.S. risk retention rules may be incompatible with foreign risk retention requirements, such as the European Union risk retention requirements and, accordingly, that sponsors required to comply with U.S. as well as foreign risk retention regulations could be subject to conflicting rules. Commenters also requested that the agencies clarify how the dollar value of ABS interests should be determined and that satisfaction of conditions to the safe harbor be tested as of the date of issuance only and not on an ongoing basis.

The final rule sets forth a foreign safe harbor that is substantially similar to that included in the reproposal. The agencies have retained the 10 percent limit on the value of ABS interests sold to U.S. persons for safe harbor eligibility. The agencies continue to believe that the 10 percent limit appropriately aligns the safe harbor with the objective of the rule, which is to exclude only those transactions with limited effect on U.S. interests, underwriting standards, risk management practices, or U.S. investors.

The agencies wish to make clear that, in general, the rule is intended to include in the calculation of the 10 percent limit only ABS interests sold in the initial distribution of ABS interests. Secondary sales to U.S. persons would not normally be included in the calculation. However, secondary sales into the U.S. under circumstances that indicate that such sales were contemplated at the time of the issuance (and not included for purposes of calculating the 10 percent limit) might be viewed as part of a plan or scheme to evade the requirements of the rule.

The 10 percent limit as applied to the sale or transfer of any ABS interest would need to be computed only on the date of initial distribution of that ABS interest, not an ongoing basis following such initial distribution. If different classes or portions of the same class of ABS interests are distributed by or on behalf of the issuing entity or a sponsor on different dates, the 10 percent limit would need to be calculated on each such distribution date.

Under the rule, interests retained by the sponsor may be included, as part of the aggregate ABS interests in the securitization transaction, in calculating the percentage of those ABS interests sold to U.S. persons or for the account or benefit of U.S. persons.

The agencies considered the comments requesting a mutual recognition framework and observe that

[215] As the agencies noted in the original proposal, the safe harbor is intended solely to provide clarity that the agencies will not apply the requirements of the final rule to transactions that meet all of the conditions of the safe harbor. The safe harbor should not be interpreted as reflecting the views of any agency as to the potential scope of transactions or persons subject to section 15G or the final rule.

[216] The agencies note that the value of an ABS interest for this purpose would be its fair value on the date of sale, determined using the fair value measurement framework under GAAP.

such a framework has not been generally adopted in non-U.S. jurisdictions with risk retention requirements. As explained in the preamble to the proposed rule, given the many differences between jurisdictions, such as securitization frameworks that place the obligation to comply with risk retention requirements upon different parties in the securitization transaction, different requirements for hedging, risk transfer, or unfunded risk retention, and other material differences, the agencies believe that it would likely not be practicable to construct such a ''mutual recognition'' system that would meet all the requirements of section 15G of the Exchange Act. Moreover, in several such jurisdictions, the risk retention framework recognizes unfunded forms of risk retention, such as standby letters of credit, which the agencies do not believe provide sufficient alignment of incentives and have rejected as eligible forms of risk retention under the U.S. framework. Finally, the agencies believe that the rule incorporates sufficient flexibility for sponsors with respect to forms of eligible risk retention to permit foreign sponsors seeking a significant U.S. investor base to retain risk in a format that satisfies applicable foreign and U.S. regulatory requirements, even though such dual compliance requirements might cause a sponsor to structure a transaction differently than it would have chosen had it not been subject to such multiple requirements.

The agencies do not agree that securitizations with U.S. persons, sponsors or issuing entities with no U.S. offerees, or that conduct all sales pursuant to Regulation S of the Securities Act, should be exempt from the 10 percent limit. If the rule excluded such securitizations or sales from the 10 percent limit, a market for poorly underwritten assets could evolve and negatively impact U.S. underwriting standards and risk management practices.

Improving underwriting standards is one of the goals of risk retention and, for the rule to be effective, the rule should be applied in a manner that maintains underwriting standards and risk management practices in the United States. The agencies' adoption of the foreign safe harbor incorporates the agencies' understanding of current securitization markets and market trends, including the importance of U.S. investors in global securitization markets. As securitization markets evolve, the agencies will be alert to ensuring any such changes do not undermine the effectiveness of the rule in achieving the purposes of section 15G. Accordingly, the agencies will monitor compliance with the safe harbor and the contexts in which the safe harbor is relied upon. Should it become apparent that reliance on the safe harbor has resulted in market shifts that are detrimental to investors or securitization markets, for example where significant amounts of securitizations collateralized by U.S. assets are conducted in reliance on the safe harbor and such reliance undermines underwriting standards and risk management practices in the United States, the agencies will consider the applicability of the anti-evasion provisions of the safe harbor or will consider modifications to the safe harbor.

F. Sunset on Hedging and Transfer Restrictions

As discussed in Part III.D of this Supplementary Information, section 15G(c)(1)(A) of the Exchange Act provides that sponsors may not hedge or transfer the risk retention interest they are required to hold.[217] However, the statute also provides that the agencies shall specify the minimum duration of risk retention. As explained in the reproposal, the agencies believe that the primary purpose of risk retention—sound underwriting—is less likely to be effectively promoted by risk retention requirements after a certain period of time has passed and a peak number of delinquencies for an asset class has occurred. Therefore, the agencies proposed two categories of duration for the transfer and hedging restrictions—one for RMBS and one for other types of ABS interests.

For RMBS, the transfer and hedging restrictions under the proposed rule would expire on or after the date that is (1) the later of (a) five years after the date of the closing of the securitization or (b) the date on which the total unpaid principal balance of the securitized assets is reduced to 25 percent of the original unpaid principal balance as of the date of the closing of the securitization, but (2) in any event no later than seven years after the date of the closing of the securitization.

For all ABS interests other than RMBS, the transfer and hedging restrictions under the reproposed rule would expire on or after the date that is the latest of (1) the date on which the total unpaid principal balance of the securitized assets that collateralize the securitization is reduced to 33 percent of the original unpaid principal balance as of the date of the closing of the securitization, (2) the date on which the total unpaid principal obligations under the ABS interests issued in the securitization is reduced to 33 percent of the original unpaid principal obligations at the closing of the securitization transaction, or (3) two years after the date of the closing of the securitization transaction.[218]

The reproposal also included a provision that the proposed rule's restrictions on transfer and hedging would end if a conservator or receiver of a sponsor or other holder of risk retention is appointed pursuant to federal or state law.

The agencies invited comment on the sunset provisions and asked whether they were appropriately calibrated for RMBS and all other asset classes, and whether it was appropriate to provide a sunset provision for all RMBS. Several commenters expressed general support for the sunset provisions but others requested shorter time period restrictions. One commenter suggested longer time period restrictions on certain asset classes, while others proposed shortening the time periods and adding more flexibility. One commenter suggested that there should be an outside time limit of no more than five years for asset classes other than RMBS and CMBS, including student loans, aircraft leases, shipping container leases, railcar leases, and structured settlements of personal injury awards, lottery winnings, and other assets. A few commenters requested clarification for transactions that do not typically have a nominal ''principal balance'' and one commenter requested that the test use the cut-off date instead of the closing date for measurement.

For RMBS, a few commenters requested that sunset occur three to four years after closing, while another commenter requested a sunset of two years after the security is issued. One commenter recommended that the agencies adopt a flat five-year sunset for RMBS and eliminate the 25 percent remaining unpaid balance test. In support of a three-year sunset after closing, some commenters requested that the RMBS sunset provision be analogous to the FHFA framework for

[217] 15 U.S.C. 78o–11(c)(1)(A). As with other provisions of risk retention, the agencies could provide an exemption under section 15G(e) of the Exchange Act if certain findings were met. *See id.* at section 78o–11(e).

[218] As described in Part III.B.5 of this Supplementary Information, the agencies also included in the reproposal, as an exception to the transfer and hedging restrictions, the ability to transfer the retained B-piece interest in a CMBS transaction (whether held by the sponsor or a third-party purchaser) to a third-party purchaser five years after the date of the closing of the securitization transaction, provided that the transferee satisfies each of the conditions applicable to an initial third-party purchaser under the CMBS option.

representations and warranties whereby lenders are relieved of certain repurchase obligations for loans after 36 months of on-time payments. One commenter requested that the sunset provisions be calibrated differently depending on the risk associated with the underlying RMBS.

A few commenters recommended a two-year sunset provision for open market CLOs, noting that anything longer would provide no relief given the fact that these pools allow for reinvestment. Two commenters requested alternative sunset provisions for student, vehicle, and equipment loans where sunset would occur on the earlier of (i) two years after the closing date, and (ii) the later of (A) the reduction of the unpaid principal balance of the securitized assets to 33 percent or less of the cut-of date balance and (B) the reduction of the unpaid principal balance of the ABS interests sold to third parties to 33 percent or less of the closing date balance.

The agencies have carefully considered the comments and are adopting the sunset provisions as proposed. In reviewing the reproposal and the comments, the agencies considered the duration for which the rule should maintain the sponsor's exposure to the performance of the assets, balancing the time it might take for weaker underwriting to manifest itself against the competing consideration that, as that time period extends, other factors may be more influential triggers of asset default. Although the time periods proposed by the agencies are longer than commenters generally asserted were necessary in striking this balance, the agencies seek to establish a conservative approach. It is expected that this approach will cause sponsors to focus on underwriting criteria on the front end, at the time of securitization, and the agencies believe that requiring them to be mindful of their exposure for the periods the agencies proposed will improve the sponsor's alignment of incentives and reinforce their focus on the performance of their assets beyond their initial creation. Accordingly, with respect to the proposed risk retention duration requirements for RMBS and for non-residential mortgage ABS interests, the agencies are concerned that reducing the risk retention periods further would weaken the incentive for sponsors to ensure sound underwriting.

With respect to the proposed risk retention duration requirement for RMBS, as the agencies discussed in the reproposal, because residential mortgages typically have a longer duration than other assets, weaknesses in underwriting may manifest themselves later than in other asset classes and can be masked by strong housing markets. Moreover, residential mortgage pools are uniquely sensitive to adverse selection through prepayments: if market interest rates fall, borrowers refinance their mortgages and prepay their existing mortgages, but refinancing is not available to borrowers whose credit has deteriorated, so mortgages to less creditworthy borrowers become concentrated in the RMBS pool in later years. Accordingly, the agencies are maintaining a different sunset provision for RMBS collateralized by residential mortgages that are subject to risk retention.

In response to commenters who, in the context of assets other than residential mortgage loans, asked for clarification as to how the sunset provisions apply if the securitized assets do not have a principal balance, the agencies have revised the rule to clarify that the sunset criterion relating to principal balance would not apply to securitized assets that do not have a principal balance, if applicable. Thus, for such securitized assets, the rule provides that the transfer and hedging restrictions may terminate upon the later of two years after the date of the closing of the securitization transaction or the date on which the total unpaid principal balance of the issued ABS interests is reduced to 33 percent of their original balance.

In addition, the agencies continue to believe the exemptions to the prohibitions on transfer for CMBS eligible horizontal residual interests proposed in the reproposal would help ensure high quality underwriting standards for the securitizers and originators of non-residential mortgage ABS interests and CMBS, would improve the access of consumers and businesses to credit on reasonable terms, and are in the public interest and for the protection of investors.[219]

IV. General Exemptions

Sections 15G(c)(1)(G) and 15G(e) of the Exchange Act require the agencies to provide a total or partial exemption from the risk retention requirements for certain types of asset-backed securities or securitization transactions.[220]

In addition, section 15G(e)(1) permits the agencies jointly to adopt or issue additional exemptions, exceptions, or adjustments to the risk retention requirements of the rule, including exemptions, exceptions, or adjustments for classes of institutions or assets, if the exemption, exception, or adjustment would: (A) help ensure high quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (B) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.

Consistent with these provisions, the reproposal would have exempted certain types of asset-backed securities or securitization transactions from the credit risk retention requirements of the rule. Each of these exemptions, along with the comments and the final rule that the agencies are adopting, are discussed below. The agencies have determined that each of the exemptions adopted pursuant to section 15G(e)(1), including for the reasons described below and in the reproposal, satisfy the requirements described in the preceding paragraph.

A. Exemption for Federally Insured or Guaranteed Residential, Multifamily, and Health Care Mortgage Loan Assets

Section 15G(e)(3)(B) of the Exchange Act provides that the agencies, in implementing risk retention regulations, shall not apply risk retention to any residential, multifamily, or health care facility mortgage loan asset, or securitization based directly or indirectly on such an asset, that is insured or guaranteed by the United States or an agency of the United States.[221] To implement this provision, the reproposal would have exempted from the risk retention requirements any securitization transaction collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States.[222]

Several commenters expressed support for the exemption for securitization transactions collateralized solely by assets that are insured or guaranteed as to the payment of principal and interest by the United States or its agencies. One commenter urged the agencies to extend the government-backed exemptions to asset-backed securities backed by foreign governments. Another commenter requested that the agencies clarify that Enterprise securitizations of multifamily

[219] 15 U.S.C. 78o–11(e)(2).

[220] *See* 15 U.S.C. 78o–11(c)(1)(G) and (e).

[221] *See id.* at section 78o–11(e)(3)(B).

[222] *See id.* at section 78o–11(e)(3)(B).

loans are exempt from the risk retention requirements.

After considering the comments received, the agencies are adopting as proposed the exemption from the risk retention requirements for any securitization transaction that is collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed in whole or in part as to the payment of principal and interest by the United States or an agency of the United States.

The agencies are not adopting an exemption from risk retention for securitizations of assets issued, guaranteed or insured by foreign government entities. As the agencies noted in the reproposal, the agencies continue to believe that it would not be appropriate to exempt such transactions from risk retention if they were offered in the United States to U.S. investors. Nor are the agencies expanding this (or any other exemption) to include all securitizations of multifamily loans by the Enterprises. Such securitizations require risk retention under the rule unless they meet the requirements of section 8 of the rule.

B. Exemption for Securitizations of Assets Issued, Insured, or Guaranteed by the United States or any Agency of the United States and Other Exemptions

Section 15G(c)(1)(G)(ii) of the Exchange Act requires that the agencies, in implementing risk retention regulations, provide for a total or partial exemption from risk retention for securitizations of assets that are issued or guaranteed by the United States or an agency of the United States, as the agencies jointly determine appropriate in the public interest and the protection of investors.[223] The reproposal would have provided full exemption from risk retention for any securitization transaction in which the ABS interests issued in the transaction were (1) collateralized solely by obligations issued by the United States or an agency of the United States and servicing assets; (2) collateralized solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than residential, multifamily, or health care facility mortgage loan securitizations discussed above) and servicing assets; or (3) fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States.

Consistent with section 15G(e)(3)(A) of the Exchange Act, the reproposal also would have provided an exemption from risk retention for any securitization transaction collateralized solely by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation, and servicing assets.[224] Additionally, the reproposal would have provided an exemption from risk retention, consistent with section 15G(c)(1)(G)(iii) of the Exchange Act,[225] for securities (1) issued or guaranteed by any state[226] of the United States, or by any political subdivision of a state, or by any public instrumentality of a state that is exempt from the registration requirements of the Securities Act by reason of section 3(a)(2) of the Securities Act, or (2) defined as a qualified scholarship funding bond in section 150(d)(2) of the IRS Code.

One commenter requested that the final rule retain the full exemption for securities issued by a state (including a political subdivision or public instrumentality of a state), and for securities that meet the definition of a qualified scholarship funding bond. This commenter requested clarification that the exemption for state and municipal securitizations would apply to both securities issued on a federally taxable basis and securities issued on a federal tax-exempt basis. A few commenters urged that the agencies clarify that all securities issued by housing finance agencies and other state government agencies and collateralized by loans financed by housing finance agencies are exempted.

After considering the comments received, the agencies are adopting as proposed the exemption from the risk retention requirements for any securitization transaction that is (1) collateralized solely by obligations issued by the United States or an agency of the United States and servicing assets; (2) collateralized solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than residential, multifamily, or health care facility mortgage loan securitizations discussed above) and servicing assets; (3) insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; (4) collateralized solely by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation, and servicing assets; (5) issued or guaranteed by any state of the United States, or by any political subdivision of a state, or by any public instrumentality of a state that is exempt from the registration requirements of the Securities Act by reason of section 3(a)(2) of the Securities Act; or (6) defined as a qualified scholarship funding bond in section 150(d)(2) of the IRS Code.

Regarding whether the exemption for state and municipal securitizations would apply to both securities issued on a federally taxable basis and securities issued on a federal tax-exempt basis, the agencies note that the text of the exemption does not specifically make a distinction between taxable and tax-exempt securities. To the extent that a security otherwise satisfies the requirements of the state and municipal securitizations exemption, such security is exempt from the risk retention rule.

The agencies are exempting loans that are exempt from the ability-to-repay requirements (such as loans made through state housing finance agency programs and certain community lending programs) that were not separately included in the definition for QRM (which under the statute cannot be broader than QM) and would only be QRMs if they otherwise met the qualifying criteria for QMs. This exemption is discussed more fully below.

C. Federal Family Education Loan Program and Other Student Loan Securitizations

The reproposal would have exempted any securitization transaction that is collateralized solely (excluding servicing assets) by student loans made under the Federal Family Education Loan Program (''FFELP'') that are guaranteed as to 100 percent of defaulted principal and accrued interest (*i.e.,* FFELP loans with first disbursement prior to October 1993, or pursuant to certain limited circumstances where a full guarantee was required). A securitization transaction that is collateralized solely (excluding servicing assets) by FFELP loans that are guaranteed as to at least 98 percent (but less than 100 percent) of defaulted principal and accrued interest

[223] *See id.* at section 78o–11(c)(1)(G).

[224] *See* 15 U.S.C. 78o–11(e)(3)(A).

[225] *See id.* at section 78o–11(c)(1)(G)(iii).

[226] Section 2 of the rule defines ''state'' as having the same meaning as in section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)), which includes a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

would have its risk retention requirement reduced to 2 percent. Any other securitization transaction that is collateralized solely (excluding servicing assets) by FFELP loans would have its risk retention requirement reduced to 3 percent.

Several commenters urged the agencies to expand the proposed exemption for securitization transactions collateralized by FFELP loans to a full exemption from risk retention requirements. These commenters asserted that a risk retention requirement ranging from zero percent to 3 percent for FFELP loan securitizations that are subject to a guaranty ranging from 97 percent to 100 percent means risk retention is required in an amount greater than the loss exposure on the loans. These commenters stated that other securitization products would receive a full exemption under the reproposal even if they are only partially insured or guaranteed. A few of these commenters also asserted that risk retention would have no effect on the underwriting standards since these loans have already been funded and the program is no longer underwriting new loans. One of these commenters urged the agencies to apply the risk retention requirement only to the portion of the FFELP loans that are not guaranteed.[227]

Commenters also recommended that the agencies accept alternative forms of risk retention for FFELP loan securitizations. The suggested alternative forms of risk retention include a simplified representative sample method, an exemption for on-balance sheet transactions where the structure clearly demonstrates at least 5 percent risk retention, initial equity contribution, overcollateralization, and unfunded forms of risk retention. One of these commenters cited the European Union risk retention regime which recognizes certain unfunded forms of risk retention.

One commenter asked that the agencies extend the FFELP loan securitization exemption to include student loan-backed securities issued by entities exempt from registration under section 3(a)(4) of the Securities Act and by entities that have received tax-exempt designations under section 501(c)(3) of the IRS Code. This commenter asserted that these issuers are constrained in their ability to raise sufficient capital to meet the risk retention requirements. One other commenter requested that student loan revenue bonds issued by nonprofit issuers that are supported by third-party credit enhancement be exempted. This commenter asserted that investors in these bonds are not making their investment decisions based on the credit risk and performance of the asset pool, and that these bonds are assessed based on the creditworthiness and structure of the third-party credit enhancement. Another commenter requested that all nonprofit public purpose student loan providers be fully exempted from risk retention requirements. This commenter asserted that the structure of the securitizations issued by these entities, and the history of investor interest in security issuances by nonprofit organizations, reflect the strong alignment of interests between the investors and sponsors of these types of securitization transactions.

Another commenter requested clarification that the exemption for qualified scholarship funding bonds apply to both securities issued on a federally taxable basis and securities issued on a federal tax-exempt basis.

After considering the comments received, the agencies are adopting the reductions in the amount of required risk retention for FFELP loan securitization as reproposed. The agencies do not believe that providing a full exemption to partially insured or guaranteed FFELP loans is warranted. The agencies believe that the reductions in risk retention for FFELP loan securitizations described in the reproposal reflect the appropriate level of ''skin in the game'' for these transactions, encouraging high quality underwriting generally in the selection of assets for securitization and appropriate risk management practices in post-default servicing. The agencies also reiterate that they have generally declined to recognize unfunded forms of risk retention and continue to do so for purposes of the final rule.

Consistent with the reproposal, the agencies are not expanding the proposed exemptions to cover student loans other than FFELP student loans, including student loan-backed securities issued by entities exempt from registration under section 3(a)(4) of the Securities Act or entities that have received tax exempt designations under section 501(c)(3) of the IRS Code, because comments received on the reproposal did not provide a basis to allow the agencies to conclude that the structures or underwriting practices of these securitizations align the interests of securitizers with the interests of investors such that an exemption would be appropriate under section 15G(c)(1)(G) or section 15G(e) of the Exchange Act. The agencies are concerned that an exemption for sponsors of student loan-backed securities issued by entities exempt from registration under section 3(a)(4) of the Securities Act or entities that receive tax exempt designations under section 501(c)(3) of the IRS Code would permit evasion of the rule through the use of an entity that meets the requirements of such exemption, but whose sole purpose is the issuance of ABS interests. Regarding whether the exemption for qualified scholarship funding bonds would apply to both securities issued on a federally taxable basis and securities issued on a federal tax-exempt basis, the agencies note that the text of the exemption does not specifically make a distinction between taxable and tax-exempt securities. To the extent a security satisfies the requirements of the qualified scholarship funding bond exemption in the rule, such security is exempt from the risk retention rule. The agencies believe that there is not sufficient justification to provide an exemption for bonds that may have some similarities to a qualified scholarship funding bond, but do not meet the statutory definition.

D. Certain Public Utility Securitizations

The reproposal would have provided an exemption from risk retention for utility legislative securitizations. Specifically, the reproposal would have exempted any securitization transaction where the ABS interests are issued by an entity that is wholly owned, directly or indirectly, by an investor-owned utility company that is subject to the regulatory authority of a state public utility commission or other appropriate state agency. Additionally, ABS interests issued in an exempted utility legislative securitization transaction would have been required to be secured by the intangible property right to collect charges for the recovery of specified costs and such other assets of the issuing entity. The reproposal would have defined ''specified cost'' to mean any cost identified by a state legislature as appropriate for recovery through securitization pursuant to ''specified cost recovery legislation,'' which is legislation enacted by a state that:

- Authorizes the investor-owned utility company to apply for, and authorizes the public utility commission or other appropriate state agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;
- Provides that pursuant to a financing order, the utility acquires an

[227] This commenter suggested, as an example, that if only 3 percent of a FFELP loan is uninsured, the 5 percent risk retention requirement should only apply to the 3 percent uninsured portion, resulting in a 0.15 percent risk retention requirement with respect to such loan.

intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party; and

- Guarantees that neither the state nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation.[228]

The agencies received no comments on the utility legislative securitization exemption, and are adopting the exemption as reproposed.

E. Seasoned Loan Securitizations

In the reproposal, the agencies proposed to exempt from risk retention any securitization transaction that is collateralized solely by servicing assets and seasoned loans that (1) have not been modified since origination and (2) have never been delinquent for 30 days or more. With respect to residential mortgages, the reproposal would have defined ''seasoned loan'' to mean a residential mortgage loan that either (1) has been outstanding and performing for the longer of (i) five years or (ii) the period until the outstanding principal balance of the loan has been reduced to 25 percent of the original principal balance; or (2) has been outstanding and performing for at least seven years. For all other asset classes, the reproposal would have defined ''seasoned loan'' to mean a loan that has been outstanding and performing for the longer of (1) two years, or (2) the period until the outstanding principal balance of the loan has been reduced to 33 percent of the original principal balance.

The agencies received a number of comments on the seasoned loan exemption from financial entities and financial trade organizations. Commenters generally favored expanding the seasoned loan exemption, although they differed in how to expand the exemption. One commenter proposed that ''seasoned loans'' be redefined to accommodate auto loans that have been outstanding and performing for the shorter of (1) two years, or (2) the period until the outstanding principal balance of the loan has been reduced to 33 percent of the original principal balance. Other commenters proposed that the exemption be expanded to accommodate certain previously modified residential mortgage loans that have not had past delinquency events.

One commenter requested that loans with delinquencies up to 60 days qualify, and another suggested that loans that have been delinquent and then brought current qualify if they perform for 36 months after the delinquency. Another commenter asked that the exception include loans that had no more than three 30-day delinquencies if the loan is otherwise performing for five years and not delinquent at the time of securitization.

Other commenters asked that the agencies permit blended securitizations of seasoned loans with other loans that require risk retention, with the amount of risk retention reduced accordingly. These commenters expressed concern of potentially fragmenting the market for these loans. However, the investor members of one commenter questioned the need to blend pools of seasoned and ''non-seasoned'' loans because ABS interests collateralized by these types of assets are unlikely to appeal to the same types of investors.

After considering the comments received, the agencies are adopting the seasoned loan exemption as reproposed. The agencies believe that there is insufficient data to justify expanding the seasoned loan exemption and that the alignment of the seasoned loan exemption with the sunset provisions on hedging and transfer enhances consistency across the provisions of the rule and better aligns the incentives of sponsors and investors. The agencies do not believe that the period of time during which a loan is required to have been outstanding to qualify as a seasoned loan should be different from the period after which the transfer and hedging restrictions sunset. Nor do they believe that loans that have at any time been more than 30 days delinquent should qualify. And, while modifications of loans for reasons other than loss mitigation might be well-underwritten loans, it would be difficult if not impossible to verify the underlying reasons for a modification. Commenters did not provide examples of securitization transactions collateralized by newly originated and seasoned loans or data or reasoned analysis to support the assertion that such transactions would fill existing needs for financing. Because the agencies are not persuaded that market fragmentation would result, the agencies are not permitting blended pools of seasoned loans and loans that would not satisfy the seasoned loan exemption.

F. Federal Deposit Insurance Corporation Securitizations

In the reproposal, the agencies proposed an exemption from risk retention for securitization transactions that are sponsored by the FDIC, acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or Title II of the Dodd-Frank Act. For the reasons discussed in the reproposal,[229] the agencies continue to believe that this exemption would help ensure high quality underwriting, and is in the public interest and for the protection of investors.[230] These receivers and conservators perform a function that benefits creditors in liquidating and maximizing the value of assets of failed financial institutions for the benefit of creditors. Accordingly, their actions are guided by sound underwriting practices, and the quality of the assets will be carefully monitored in accordance with the relevant statutory authority.

One commenter expressly supported this exemption, noting, among other things, that it would help the FDIC maximize the value of assets in conservatorship and receivership. For the reasons noted above, the agencies are adopting the FDIC securitization exemption as reproposed.

G. Exemption for Certain Resecuritization Transactions

In the reproposal, the agencies proposed two different exemptions from risk retention for certain ABS interests issued in resecuritization transactions (resecuritization ABS interests).[231] The first of these exemptions would have applied to resecuritizations of asset backed securities that met certain specific conditions set forth in proposed section 19(b)(5) (pass-through resecuritizations). The second one would have applied only to resecuritizations of certain first pay classes of mortgage backed securities that met the requirements in proposed

[228] The eligibility standards for the exemption are similar to certain requirements for these securitizations outlined in IRS Revenue Procedure 2005–62, 2005–2 C.B. 507, that are relevant to risk retention. This Revenue Procedure outlines the Internal Revenue Service's requirements in order to treat the securities issued in these securitizations as debt for tax purposes, which is the primary motivation for states and public utilities to engage in such securitizations.

[229] *See* Revised Proposal, 78 FR at 57978.

[230] *See* 15 U.S.C. 78o–11(e).

[231] *See* Revised Proposal, 78 FR at 57972–57974. In a resecuritization transaction, the asset pool collateralizing the ABS interests issued in the transaction comprises one or more asset-backed securities.

section 19(b)(6) (first-pay-class resecuritization). Under the reproposal, sponsors of resecuritizations that were not structured to meet the terms of one of these two exemptions would have been required to meet the credit risk retention requirements with respect to the resecuritization transaction unless another exemption for the transaction was available.

Under the section 19(b)(5) of the reproposal, the resecuritization ABS interests would have to be collateralized solely by servicing assets and existing ABS interests issued in a securitization transaction for which credit risk was retained as required under the original proposal, or which was otherwise exempted from credit risk retention requirements (compliant ABS interests). Second, the transaction would have to be structured so that it involved the issuance of only a single class of ABS interests and provided for a pass through of all principal and interest payments received on the underlying asset-backed securities (net of expenses of the issuing entity) to the holders of such class of ABS interests. The agencies explained that because the holder of a resecuritization ABS interest structured as a single-class pass-through security would have had a fractional undivided interest in the pool of underlying asset-backed securities and in the distributions of principal and interest (including prepayments) from these underlying asset-backed securities, a resecuritization ABS interest meeting these requirements would not alter the level or allocation of credit and interest rate risk on the underlying asset-backed securities. The agencies had proposed this exemption in the original proposal and did not substantively alter it in the reproposal.

The agencies proposed to adopt this exemption under the general exemption provisions of section 15G(e)(1) of the Exchange Act. The agencies noted that a resecuritization transaction that created a single-class pass-through would neither increase nor reallocate the credit risk inherent in the underlying compliant ABS interests, and that the transaction could allow for the combination of asset-backed securities collateralized by smaller pools, and the creation of asset-backed securities that may be collateralized by more geographically diverse pools than those that can be achieved by the pooling of individual assets.

Under the first-pay-class resecuritization exemption in proposed section 19(b)(6), the agencies proposed a limited resecuritization exemption that would apply to certain resecuritizations of residential mortgage-backed securities structured to address prepayment risk, but that would not apply to a structure that re-allocated credit risk by tranching and subordination. To qualify for this proposed exemption, the transaction would have to have been a resecuritization of first-pay classes of ABS interests, which were themselves collateralized by first-lien residential mortgages on property located in a state,[232] and which were issued in transactions that complied with the risk retention rules or were exempt from the rule.[233] The reproposal also would have allowed a pool collateralizing the exempted first-pay-class resecuritization to contain servicing assets.

In addition, to qualify for the exemption, any ABS interest issued in the resecuritization would have had to share pro rata in any realized principal losses with all other ABS interests issued in the resecuritization based on the unpaid principal balance of such interest at the time the loss was realized. The transaction would have had to be structured to reallocate prepayment risk, and the proposed exemption specifically would have prohibited any structure which re-allocated credit risk (other than credit risk reallocated only as a consequence of reallocating prepayment risk). The reproposal also would have prohibited the issuance of an inverse floater or any similarly structured class of ABS interest as part of the exempt resecuritization transaction.[234]

The agencies proposed the first-pay-class resecuritization exemption in response to comments on the original proposal about liquidity in underlying markets and access to credit on reasonable terms.[235] The agencies noted that residential mortgage-backed securities tend to have longer maturities than other types of asset-backed securities and to have high prepayment risk. The agencies reasoned that the exemption would help provide investors with protection against prepayment risk and greater certainty as to expected life. The proposed exemption, however, did not divide the credit risk of the underlying asset-backed securities and therefore did not give rise to the same concerns as CDOs and other resecuritizations that involved tranching of credit risk.[236]

The agencies proposed the first-pay-class resecuritization exemption under the general exemption provisions of section 15G(e)(1) of the Exchange Act. The agencies determined that the provision was consistent with the requirements of this section, given the conditions established for the exemption. In particular, the agencies noted that the provision limited the exemption to resecuritizations of first-pay classes of residential mortgage-backed securities, and that it applied specific prohibitions on structures that re-allocate credit risk, so it minimized credit risk associated with the resecuritized residential mortgage-backed securities and prevented the transaction from reallocating existing credit risk while addressing some of the commenters' concerns with regard to liquidity and access to credit.[237]

The agencies received a number of comments on the proposed resecuritization exemptions. The comments did not raise specific objections or concerns with either of the two proposed exemptions, but generally urged regulators to expand the exemptions to other types of structures including those that re-tranche credit risk. Commenters asserted that applying risk retention to resecuritization of asset-backed securities that are already in the market, especially where the interests are compliant ABS interests, cannot alter the incentives for the original sponsor of asset-backed securities to ensure high-quality assets. Other commenters stated that the lack of a broad resecuritization exemption would negatively affect markets by

[232] Section 2 of the reproposed rule defined ''state'' as having the same meaning as in section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)). Thus, the ABS interests that would be resecuritized in a transaction exempted under this provision would have been required to be collateralized by mortgages on properties located in a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. *See* Revised Proposal, 78 FR at 57973.

[233] The reproposal defined ''first-pay class'' as a class of ABS interests for which all interests in the class were entitled to the same priority of principal payments and that, at the time of closing of the transaction, were entitled to repayments of principal and payments of interest prior to or pro-rata, except for principal-only and interest only tranches that are prior in payment, with all other classes of securities collateralized by the same pool of first-lien residential mortgages until such class has no principal or notional balance remaining. A single class of pass-through ABS interests under which an investor would have a fractional, undivided interest in the pool of mortgages collateralizing the ABS interests would have qualified as a ''first pay class'' under this definition.

[234] The reproposal defined ''inverse floater'' as an ABS interest issued as part of a securitization transaction for which interest or other income is payable to the holder based on a rate or formula that varies inversely to a reference rate of interest. The exclusion from the proposed exemption of transactions involving the issuance of an inverse floater class addressed concerns with the high risk of loss that has been associated with these instruments. *See* Id. at 57974.

[235] *Id.* at 57973.

[236] *Id.*

[237] *Id.*

making it harder for investors to re-structure and sell existing asset-backed securities. A number of commenters stated that the agencies should provide an exemption for resecuritizations of asset-backed securities that were issued prior to the applicable effective date of the rule. Still others expressed the view that the agencies could develop an exemption that would allow credit tranching in resecuritized asset-backed securities while limiting the scope of such exemption, such as by excluding actively managed pools, to address agencies' concerns regarding CDOs and similar structures. The comments were generally similar to comments received on the original proposal.

The agencies have carefully considered the comments received in conjunction with the purposes and requirements of the statute. As the agencies noted in the reproposal, sponsors of resecuritization transactions have considerable flexibility in choosing what ABS interests to include in the underlying pool of securitized assets as well as in creating the specific structures. This choice of securities is a type of underwriting choice with respect to those securities for inclusion in the underlying pool of securitized assets. The agencies continue to consider it appropriate, therefore, to adopt rules that will provide sponsors with sufficient incentive to choose ABS interests that have lower levels of credit risk and to not use a resecuritization to obscure what might have been sub-par credit performance of certain ABS interests. The agencies also continue to consider it appropriate to apply the risk retention requirements to resecuritization transactions generally because resecuritization transactions can result in a re-allocation of the credit risk of the underlying ABS interest. Such considerations are present whether or not the original underlying asset-backed securities were issued prior to the applicable effective date of these risk retention rules or are compliant with the rule.[238] The agencies also note that section 15G of the Exchange Act specifically contemplates applying risk retention to resecuritizations.[239]

Taking into account these considerations, the agencies continue to believe that requiring additional risk retention as the standard for most resecuritization transactions is consistent with the intent of section 15G of the Exchange Act, both in light of recent history and the specific statutory requirement that the agencies adopt risk retention standards for CDOs, and similar instruments collateralized by asset-backed securities.[240] The comments received in response to the reproposal did not raise any issues to cause the agencies to expand the scope of the exemptions for resecuritizations. In particular, the agencies do not believe that suggestions for distinguishing ''typical'' resecuritizations from CDOs or other higher risk transactions could be applied consistently across transactions.

As a consequence, the agencies are adopting the pass-through resecuritization exemption in section 19(b)(5), as proposed in the reproposal. This exemption will apply only if the resulting resecuritization ABS interests consist of only a single class of interests and provides for a pass through of all principal and interest payments received on the underlying ABS interests (net of expenses of the issuing entity). The new ABS interests have to be collateralized solely by servicing assets and existing ABS interests issued in a securitization transaction for which credit risk was retained as required under the rule, or which are otherwise exempted from credit risk retention requirements in the rule.

The agencies are also adopting as proposed the exemption in section 19(b)(6). Thus, to qualify for this exemption, the ABS interests issued in the resecuritization must share pro rata in any realized principal losses with all other holders of ABS interests issued in the resecuritization based on the unpaid principal balance of such interest at the time the loss is realized. The transaction must be structured to reallocate prepayment risk, and cannot re-allocate credit risk (other than credit risk reallocated as a collateral consequence of reallocating prepayment risk). While the agencies specifically invited comment on whether the issuance of an inverse floater as part of a first-pay class resecuritization exemption would be necessary to provide adequate prepayment protection for investors, the agencies received no specific response to this question or comments on the prohibition proposed on the issuance of an inverse floater or any similarly structured class of ABS interests as part of an exempt transaction under section 19(b)(6), and are adopting this prohibition as part of the final rule.

H. Other Exemptions From Risk Retention Requirements

1. Legacy Loan Securitizations

Some commenters on the original proposal recommended an exemption from risk retention for securitizations and resecuritizations of loans made before the applicable effective date of the final rule, or ''legacy loans,'' asserting that risk retention would not affect the underwriting standards used to create those loans. After considering the comments received on the original proposal, the agencies did not propose to provide an exemption from risk retention for legacy loan securitizations in the reproposal. The agencies did not believe that such securitizations should be exempt from risk retention, because risk retention requirements are designed to incentivize securitizers to select well-underwritten loans, regardless of when those loans were underwritten. Furthermore, the agencies did not believe that exempting securitizations of legacy loans from risk retention would satisfy the statutory criteria for an exemption under section 15G(e) of the Exchange Act.[241]

On the reproposal, the agencies received comments from one financial trade organization that again recommended exempting securitizations of legacy loans. This commenter requested that the agencies provide a legacy loan exemption, because in the case of loans that were originated prior to the adoption of the final risk retention rules, it would not have been possible to create those assets in compliance with a regulatory scheme whose precise terms were unknown at the time of origination.

As the agencies stated in the reproposal, the agencies do not believe it is appropriate to exempt legacy loans because the risk retention requirements affect the quality of loans that are selected for a securitization transaction. Therefore, the agencies are not adopting an exemption from risk retention for legacy loan securitizations in the final rule.

2. Corporate Debt Repackagings

Some commenters on the reproposal urged the agencies to adopt an exemption from risk retention for ''corporate debt repackagings.''[242] One

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[238] Section 15G of the Exchange Act would not apply to asset-backed securities issued before the applicable effective date of the agencies' final rule, and that as a practical matter, private-label asset-backed securities issued before the applicable effective date of the final rule would typically not be compliant ABS interests. Asset-backed securities issued before the applicable effective date that meet the terms of an exemption from the rule or that are guaranteed by the Enterprises, however, could qualify as compliant ABS interests.

[239] *See* 15 U.S.C. 78o–11(a).

[240] *See* 15 U.S.C. 78o–11(c)(1)(F).

[241] *See* 15 U.S.C. 78o–11(e).

[242] According to commenters, corporate debt repackagings are created by the deposit of corporate debt securities purchased by the sponsoring

Continued

of these commenters recommended that, as an alternative, the agencies create a limited exemption for corporate debt repackaging transactions that repackage securities that could be sold directly to investors without risk retention, and that do not involve credit tranching. This commenter also proposed additional means of satisfying the risk retention requirements in corporate debt repackaging transactions, including the retention of 5 percent of the underlying securities in the repackaging transaction, or the retention of 5 percent of any class of securities issued in the repackaging that is *pari passu* with the securities being issued to the investors in the transaction.

Consistent with the reproposal and for the reasons discussed therein,[243] the agencies are not adopting an exemption for corporate debt repackagings. As stated in the reproposal, the agencies do not believe an exemption is warranted because the underlying assets (the corporate bonds) are not asset-backed securities. As the agencies stated in the reproposal, regardless of the level of credit risk a corporate debt issuer believes it holds on its underlying corporate bonds, the risk retention requirement would apply at the securitization level, and the sponsor of the securitization should be required to hold 5 percent of the credit risk of the securitization transaction. The agencies continue to believe that risk retention at the securitization level for corporate debt repackagings is necessary in order to align the interest of the sponsor in selecting the bonds in the pool and structuring the terms of the ABS interests with the interests of the investors in the securitization.

One commenter requested a general exemption for securitization transactions in which collateral consists primarily of unsecured direct obligations of the sponsor or its affiliates. The agencies are not adopting any such exemption as this commenter did not provide sufficient detail on which to base such exemption.

3. Securitizations of Servicer Advance Receivables

Some commenters requested that the agencies provide an exemption for servicer advance receivables.[244] According to these commenters, the servicer advance facilities (''SAFs'') pursuant to which these servicer advance receivables are securitized create the requisite levels of credit enhancement through over-collateralization in the form of an equity interest in the issuing entity, that is subordinated to all other classes of ABS interests issued by the issuing entity. These commenters indicated that securitizations of servicer advance receivables should be exempted from the risk retention requirements because servicer advances are payments that a servicer is required to make under the terms of the servicing agreements, and are not originated for purposes of distribution in a securitization transaction. These commenters also said that the fundamental goal of risk retention—the alignment of interests in order to produce higher quality underwriting standards—is not relevant in these servicer advance receivable securitizations, because these servicer advance receivables do not represent an extension of credit by a lender to a borrower, and that there is no underwriting criteria.

If the agencies declined to provide an exemption, these commenters requested that the agencies allow the equity interests held by servicer-sponsors of the SAFs to satisfy the risk retention requirement, and to allow the equity interest (in an SAF structured as a revolving master trust) that supports all series of ABS interests to qualify as a risk retention option for revolving master trusts.

The agencies are not adopting an exemption from risk retention for SAFs. The agencies believe that there is insufficient data to justify granting this specific exemption. Furthermore, the agencies do not believe that there are particular features of this type of securitization that would warrant an exemption under the factors that the agencies must consider in section 15G(e) of the Exchange Act. However, as discussed in Part III.B.2 of this Supplementary Information, an SAF that meets the final rule's eligibility requirements for the seller's interest option for revolving pool securitizations may avail itself of that option. Alternately, the sponsor of an SAF may structure its equity interest in the trust as an eligible horizontal residual interest.

V. Reduced Risk Retention Requirements and Underwriting Standards for ABS Interests Collateralized by Qualifying Commercial, Commercial Real Estate, or Automobile Loans

As contemplated by section 15G of the Exchange Act, the reproposal included a zero risk retention requirement, or exemption, for securitizations consisting solely of commercial loans, commercial real estate (CRE) loans, and automobile loans that met specific proposed underwriting standards (qualifying assets). The reproposal also would have allowed sponsors to commingle qualifying and non-qualifying assets of a similar type to receive up to a 50 percent reduction in the minimum required risk retention amount.

While many commenters supported the ability to blend pools of qualifying and non-qualifying assets to obtain a reduced risk retention amount, commenters also requested that the agencies reduce or remove the 50 percent limit on the reduction for blended pools of commercial, CRE, or automobile loans. Some commenters claimed that the limit would be a disincentive for sponsors to include more qualifying assets in blended pools (and thereby improve the overall quality of the pool) once the 50 percent threshold had been reached. In addition, a comment was made that, because the agencies would be imposing a risk retention requirement on qualifying assets if they exceeded 50 percent of the pool, this would be contrary to the overall proposed exemption for qualifying assets. Other commenters supported the limit on blended pools or generally opposed allowing blended pools of qualifying and non-qualifying assets because of the concern that a blended pool could facilitate the ability of sponsors to obscure the credit quality of the non-qualifying assets.

Under the reproposal, a sponsor of a transaction with a blended pool would have to provide disclosures to investors, its primary Federal regulator, and the Commission the manner in which the sponsor determined the aggregate risk retention requirement for the pool after including qualifying assets, a description of the qualifying and non-qualifying assets, and material difference between them. Furthermore, the reproposal would have required a sponsor to either repurchase out of the pool any qualifying asset found not to meet the proposed underwriting criteria after securitization or to cure the defects to bring the loan into conformity with the criteria. A few commenters

institution in the secondary market into a trust which issues certificates collateralized by cash flows on the underlying corporate debt securities.

[243] *See* Revised Proposal, 78 FR at 57975.

[244] According to this commenter, servicer advance receivables are contractual rights that entitle a servicer to reimbursement for advances that it is required, under the terms of the servicing agreements, to make for purposes of liquidity enhancement.

expressed concerns about the repurchase and certification requirements in the reproposal with respect to pools containing qualifying assets. A few commenters suggested that, because of liability concerns, sponsors should not be required to make the proposed disclosures about qualifying assets to investors. One of these commenters also claimed that the statutory language was drafted such that such certifications should only be applied to residential mortgages. The commenter further asserted that investors already receive sufficient information about underlying collateral in the other asset classes, such that the proposed disclosures and certifications would be an unnecessary burden, and that investors were additionally protected by the proposed buy back or cure requirement for assets found to be non-qualifying post securitization. The commenter also asked for clarification about how long a sponsor must maintain records related to the proposed disclosure and certification requirements. A commenter also requested that with respect to automobile loan securitizations that the proposed internal control certification requirements be allowed to be performed less frequently to reduce burden.

The final rule retains the 50 percent limit for blended pools for these three asset classes. The agencies are concerned that reducing the minimum risk retention for blended pools to less than 2.5 percent of the value of the ABS interests would significantly weaken the economic incentive for the sponsor to ensure that the non-qualifying loans in the pool are appropriately underwritten. However, the agencies are allowing a limited amount of blending, as proposed, to increase the liquidity of both qualifying and non-qualifying assets by allowing these assets to be securitized in the same pool.

The agencies are also adopting the disclosure and certification requirements with regard to securitizations including qualifying assets as proposed in the revised proposal. As discussed in the revised proposal,[245] the agencies believe that the disclosure and certification requirements are important to facilitating investors' ability to evaluate and monitor the overall credit quality of securitized collateral, especially where qualifying and non-qualifying assets are combined. The agencies believe that these transparency goals are essential to the integrity of the exemption from risk retention for qualifying assets. The agencies note that the record retention requirement for certification and disclosure in other parts of the rule is three years after all ABS interests are no longer outstanding.[246] The agencies are adopting the same standard for certification and disclosures with respect to the qualifying commercial, CRE, and automobile loan exemptions to remain consistent throughout the rule. The agencies believe this timeframe will allow for a sufficient period for review by the Commission or the sponsor's Federal banking agency, as appropriate.

The agencies note the concern expressed by some commenters with respect to all three of these asset classes that, for the residential mortgage asset class and QRM, a significant portion of the existing market would qualify for an exemption from risk retention, whereas in proposing the underwriting standards for qualifying commercial loans, commercial real estate loans, and automobile loans, the agencies proposed conservative underwriting criteria that would not capture an equivalent portion of the respective markets. The agencies observe that there is a homogeneity in the securitized residential mortgage loan market that does not exist for commercial loan or commercial real estate loan asset classes. Commercial loans and commercial real estate loans typically focus on a common set of borrower and collateral metrics, but they are individually underwritten and tailored to a specific borrower or property, and often contain terms developed in view not only of the borrower's financial position but also the general business cycle, industry business cycle, and standards for appropriate leverage in that industry sub-sector. The agencies believe the additional complexity needed to create underwriting standards for every major type of business in every economic cycle would be so great that originators would almost certainly be dissuaded from attempting to implement them or attempting to stay abreast of the numerous regulatory revisions the agencies would need to issue from time to time to keep up with the changing economic cycles or industries.

The reproposed underwriting standards established a single set of requirements, which are necessary to enable originators, sponsors, and investors to be certain as to whether any particular loan meets the rule's requirements for an exemption. For the agencies to expand the underwriting criteria in the fashion suggested by some commenters, the rule would need to accommodate numerous relative standards. The resulting uncertainty of market participants as to whether any particular loan was qualified for an exemption could undermine the market's willingness to rely on the exemption.

While there may be more homogeneity in the securitized automobile loan class, the agencies are concerned that attempting to accommodate a significantly large share of the current automobile loan securitization market would require weakening the underwriting standards to the point where the agencies are concerned that they would permit the inclusion of low quality loans. For example, the agencies note that current automobile lending practices often involves no or small down payments, financing in excess of the value of the automobile (which is itself an asset of quickly declining value) to accommodate taxes and fees, and a credit score in lieu of an analysis of the borrower's ability to repay. These concerns as to credit quality are evidenced by the high levels of credit support automobile securitization sponsors build into their securitization transactions, even for so-called ''prime'' automobile loans. Moreover, securitizers from the automobile sector who commented on the original proposal and reproposal expressed no interest in using any underwriting-based exemptive approach that did not incorporate the industry's current model, which relies almost exclusively on matrices of consumer credit scores, loan-to-value (LTV) ratios, and ''on the spot'' borrower approval. One commenter stated that the entire underwriting process must occur while the customer is at the dealership. As was discussed in the reproposal, the agencies are not persuaded that it would be appropriate for the underwriting-based exemptions under the rule to incorporate a credit score metric.[247]

Finally, commenters requested that the agencies clarify that the requirement that a depositor certify as to the effectiveness of its internal supervisory controls with respect to the process for ensuring that assets that collateralize the asset-backed securities are eligible for an exemption does not impose an obligation on sponsors to guarantee that all assets meet all of the requirements to be eligible for 0 percent risk retention. As is indicated by the final rule's provision of a buyback option for non-compliant assets, the agencies do not view the requirement as requiring that the controls guarantee compliance.

[245] Revised Proposal, 78 FR at 57986.

[246] Sections 4(d) and 5(j) of the final rule.

[247] Revised Proposal, 78 FR 57985.

Rather, the process must be robust and sufficient to enable the sponsor to carefully evaluate eligibility.

A. Qualifying Commercial Loans

The reproposal included definitions and underwriting standards for qualifying commercial loans (QCLs), that, when securitized, would be exempt from the risk retention requirements. The proposed definition of commercial loan generally would have included any loan for business purposes that was not a commercial real estate loan or one-to-four family residential real estate loan.

The proposed criteria for a QCL included determining compliance with the following financial tests based on two years of past data and two years of projections: a total liabilities ratio less than or equal to 50 percent; a leverage ratio [248] of less than or equal to 3.0x; a debt service coverage (DSC) ratio of greater than or equal to 1.5x. A QCL would need to base loan payments on a straight-line amortization schedule over no more than a 5-year term. Additional standards were proposed for QCLs that are collateralized, including lien perfection and collateral inspection standards.[249]

Commenters generally asserted the proposed criteria were too strict in one or more areas. One commenter claimed that the QCL exemption would have no relevance for securitizations of commercial loans because loans that would satisfy the proposed QCL criteria typically would not be securitized and that the agencies did not seriously attempt to consider the historical performance of the asset class. Some commenters also supported the submission by other commenters to allow syndicated loans meeting certain criteria, when held by CLOs meeting certain other structural criteria, to be exempt from risk retention, as discussed above in Part III.B.7 of this Supplementary Information.

Some commenters requested that the agencies create multiple types of QCL underwriting criteria to address different industries or different types of commercial loans, for example, establishing separate criteria for vehicle fleet loans or equipment loans in order to exempt loans meeting such criteria from risk retention. These commenters asserted that the securitizations of equipment loans have performed well before, during, and after the financial crisis and that such loans should therefore have their own asset class and underwriting criteria to qualify for an exemption.

Commenters also suggested that the agencies relax the proposed QCL standards in various ways, including by: Removing the straight-line amortization criterion; increasing the maximum amortization period beyond 5 years (up to 15 or 20 years); allowing payment-in-kind loans; reducing retention for debtor-in-possession situations and loans resulting from Chapter 11 exit financings; increasing the leverage ratio to 4.5 or less; and replacing the leverage ratio with a 60 percent or 50 percent debt-to-capitalization ratio. One commenter also urged the agencies to require a valuation such as a qualified appraisal for all collateralized QCLs, noting that other proposed criteria—such as requiring a perfected security interest for secured commercial loans—would be of limited utility without a valuation requirement.

For the subsequently discussed reasons, the agencies are adopting the QCL standards as proposed. While the agencies recognize that there are many types of commercial loans to serve many types of industries and companies, it would be impracticable to accommodate each category of loan and industry with a unique set of underwriting criteria. Even applying a different set of criteria to a broader category within commercial loans, such as equipment loans, would be under- and over-inclusive and could have unintended consequences for the alignment of interests of sponsors and investors. Furthermore, as the different industries and economic conditions in which they operate change over time, such regulatory underwriting criteria could influence originations in unintended ways. In developing the underwriting standards for the reproposal, the agencies intended for the standards to be reflective of very high quality loan characteristics for most commercial borrowers. To the extent that a commercial loan is securitized, the agencies believe that risk retention provides an appropriate incentive to sponsors to carefully consider the underwriting quality of the loans being securitized; therefore, only those commercial loans that are of very high quality should be exempt from risk retention. The agencies have concluded that the proposed high quality underwriting standards are appropriate for QCLs generally, even if the standards do not correspond to the profile of loans generally securitized in CLOs. While some commercial loans are structured as bullet or interest-only loans, the agencies determined that such loans are not appropriate for QCL given the deferral of principal repayment until maturity, which can overstate the borrower's repayment capacity as measured by the DSC ratio (due to a lack of principal payments) and increase default risk related to having to refinance a larger principal amount at maturity.

While commercial loans do exist with longer terms than the maximum permitted under the underwriting criteria, the agencies do not believe such long-term commercial loans are common, and they involve more uncertainty about continued repayment ability, particularly when loans are made without collateral. With respect to payment-in-kind loans, the agencies observe that these loans are generally riskier loans, as borrowers may not be paying any interest in cash over part or all of the loan term. Therefore, the agencies do not believe it is appropriate to incorporate the changes requested by commenters with respect to term and payment-in-kind in the QCL underwriting criteria.

The agencies also continue to favor the reproposed earnings-based leverage ratio, as opposed to a capitalization ratio, to measure the ability of a borrower to service the debt and thus help determine the consequent riskiness of a loan. Finally, while a commercial lender should consider the accuracy of valuation of collateral to the extent it is a factor in the repayment of the obligation, the agencies are declining to impose a requirement of a qualifying appraisal or other particular valuation for collateral securing a QCL. The agencies observe that many types of collateral could be pledged to secure a commercial loan and, therefore, mandating particular valuation methods could be very complex and unintentionally exclusive, thereby discouraging secured loans, which are frequently safer as credits than unsecured loans and therefore provide additional avenues for funding for many borrowers. Additionally, a valuation requirement would increase the burden associated with underwriting a QCL.

In addition to the underwriting criteria discussed above, in the reproposal, the agencies proposed that all QCLs must be funded prior to the securitization and that the securitization not allow for any reinvestment periods. In addition, if a loan was subsequently found not to have met the QCL criteria, the sponsor would have been required to effect a cure or buyback of the loan.

[248] Under the reproposal, the leverage ratio would have been defined as the borrower's total debt divided by the borrower's annual income of a business before expenses for interest, taxes, depreciation and amortization are deducted, as determined in accordance with GAAP. *See* section 14 of the revised proposal (definition of ''leverage ratio'').

[249] *See* Revised Proposal, 78 FR at 57979.

One commenter requested that the agencies allow QCL loans to be funded up to six months after the issuance of the securitization. Some commenters also requested that the agencies allow QCL securitizations to have reinvestment periods, so long as the new loans added to the pool would either be QCLs or not reduce the QCL/non-QCL blended pool ratio below 50 percent. Finally, some commenters opposed the buyback provision, noting that open market CLO managers designated as sponsors under the rule are thinly capitalized and generally would not have significant financial resources available to buy back loans in the pools they manage.

The agencies are not adopting these commenter suggestions in the final rule. The agencies believe that only funded loans should be recognized as QCLs for purposes of exemption from risk retention, as there could be an adverse change in circumstances between the closing date of the securitization and a subsequent funding date for the loan that could disadvantage investors. Furthermore, changes in circumstances could mean the loan may not meet the quantitative QCL requirements upon funding. The agencies also decline to allow reinvestment periods for securitizations including QCLs. As discussed herein and in the revised proposal, there are increased concerns about transparency when qualifying and non-qualifying assets are mixed in a pool and an exemption from risk retention applies to the qualifying assets. Allowing reinvestment in addition to allowing blending of qualified and non-qualified assets could exacerbate these concerns and could allow sponsors to increase the risk of an initial pool that had a significant portion of QCLs in ways that would be difficult for investors to discern post-closing. Finally, the agencies are not removing the buyback requirement where QCLs are subsequently found not to have met the underwriting criteria at origination. The agencies do not believe that lack of financial resources of the sponsor should excuse the sponsor from meeting its obligations to ensure a loan labelled a QCL at origination met the QCL requirements. In addition, the rule allows certain underwriting errors to be addressed through cure, which would not require repurchase of the entire loan out of the pool and thus could be less financially burdensome for the sponsor.

B. Qualifying Commercial Real Estate Loans

Both the original and the revised proposals included underwriting standards for CRE loans that would be exempt from risk retention if the loans met those standards (qualifying CRE loans, or QCRE loans). As discussed in the revised proposal, the agencies made a number of changes to the QCRE standard in the reproposal to address concerns raised by commenters with respect to the original proposal. The proposed standards focused predominantly on the following criteria: The borrower's capacity to repay the loan; the value of, and the originator's security interest in, the collateral; the LTV ratio; and, whether the loan documentation includes the appropriate covenants to protect the value of the collateral.

1. Definition of Commercial Real Estate Loan

In the reproposal, a CRE loan would have been defined as any loan secured by a property of five or more residential units or by non-residential real property, where the primary source of repayment would come from the proceeds of sale or refinancing of the property or underlying rental income from entities not affiliated with the borrower. The definition would have specifically excluded land loans.

Some commenters questioned the exclusion of certain land loans from the definition of CRE in the original and revised proposals. Specifically, these commenters stated that numerous CMBS securitizations include loans to owners of a fee interest in land that is ground leased to a third party who owns the improvements and whose ground lease payments are a source of income for debt service payments on the loan. These commenters suggested that the agencies clarify that the exclusion did not apply to such loans, because these loans are included in many existing CMBS securitizations and the entire securitization would be unable to use CMBS risk retention option due to these loans being excluded from the CRE definition.

As explained in the revised proposal, the agencies did not take commenters suggestion to include some land loans in the definition of commercial real estate because of concerns, among other things, that separation of ownership between land and buildings could complicate servicing and foreclosure.[250] However, having carefully considered comments on this point following the reproposal, the agencies have decided to modify the definition of commercial real estate in the final rule to address commenters' concerns about these land loans. The agencies have concluded that excluding these ground-leased land loans on improved property from the definition is not warranted and so have explicitly included them in the definition of commercial real estate so that these loans may qualify as QCRE loans if they otherwise meet the qualifying criteria, or alternatively, may be included with pools of other CRE loans to allow the sponsor to use the third-party purchaser form of risk retention discussed in Part III.B.5 of this Supplementary Information.

[250] *See* Revised Proposal, 78 FR at 57980.

2. Single Borrower Underwriting Standard

Commenters generally supported the reproposed exemption from risk retention for QCRE loans. However, as discussed further below, many commenters stated that the proposed underwriting criteria were too strict and requested that the agencies modify the QCRE loan criteria to allow more loans to qualify for the exemption. In addition, some commenters requested that the agencies expand the QCRE loan criteria for, or provide an additional QCRE loan exemption for, single-borrower or single-credit (SBSC) transactions involving a securitization of cross-collateralized loans provided to one or more related borrowers. Commenters stated that these transactions warranted an exemption because they typically have had stronger historical performance than non-SBSC CMBS transactions and due to market practice, few or none would qualify as a QCRE loan. In addition, commenters asserted that B-piece buyers have not historically been involved in these transactions because of the limited number of loans involved. Commenters also asserted that these transactions are particularly transparent to investors because they involved only a few, large loans (as compared to other CMBS transactions) and investors typically receive granular information with respect to the loans. Commenters asserted that risk retention for these structures would cause costs to increase and possibly reduce access to credit for some companies without a commensurate increase in investor protection, given the nature of the loans involved and transparency to investors. One commenter proposed that the SBSC exemption rely exclusively on extensive disclosure about the securitization structure and loans in the structure rather than quantitative underwriting criteria. Commenters also proposed that only larger SBSC deals (over $200 million in ABS interests issued) be exempted from risk retention to reduce the possibility that the exemption would be used to effectively exempt a significant section of the market.

The agencies have carefully considered the commenters' requests for separate QCRE loan criteria for SBSC transactions. Having reviewed information provided by commenters as well as other information related to this market, the agencies have concluded that it would not be appropriate to adopt separate QCRE loan underwriting criteria for SBSC transactions. An SBSC transaction may qualify for an exemption from risk retention, like other CMBS transactions, to the extent the securitized loans qualify as QCRE loans, and the regulators do not believe there is sufficient support to justify establishing separate underwriting criteria for SBSC transactions. The agencies have not concluded that SBSC transactions as a category are of sufficiently low risk to warrant a special exemption from risk retention. While most CMBS transactions involve diversifying risk across types of properties, SBSC transactions generally focus on one specific type of property (for example, loans on properties related to one brand of hotel), which potentially concentrates and increases credit risk as compared with a diversified CMBS securitization. In addition, because of the cross-collateralization or cross-default provisions in these deals and the reliance on a single borrower, the failure of one loan in a deal could cause a default of the entire securitization.

Furthermore, the agencies are concerned that it would be difficult to construct a definition that captures an SBSC transaction in a way that would address the commenters' concerns while also being sufficiently limited in scope to prevent widespread use of the option in a manner that would undermine consistent application of the rule for CMBS transactions. The agencies are further concerned that using a deal size threshold to reduce inappropriate use of the option could be unnecessarily arbitrary and restrictive for smaller borrowers without providing sufficient regulatory benefit. Additionally, the agencies are concerned that such a definition would inadvertently lead to exempting from risk retention CMBS transactions with lower quality underwriting than intended by the exemption and less stringent cross-collateralization or cross-default features, as well as other criteria historically associated with SBSC transactions.

In addition, the agencies have concerns that the commenters' suggested conditions for which transactions would qualify as a single-borrower transaction or as a single-credit transaction would allow for widespread structural evasion of the rule. A sponsor could easily structure a CMBS transaction in which the single asset is a mortgage loan secured by multiple properties or in which the single borrower is an SPV formed by an entity that wants to finance a portfolio of unrelated properties.

Finally, the agencies note, as discussed further below, that the criteria for QCRE loans has been modified in the final rule to provide some additional flexibility.

3. Proposed QCRE Loan Criteria

As discussed above, the agencies adjusted some of the QCRE loan underwriting criteria as set forth in the original proposal in response to commenter concerns. The agencies generally reproposed the original structure of the qualifying criteria, divided into four categories: ability to repay, loan-to-value requirement, valuation of the collateral, and risk management and monitoring. These sections and their associated comments are discussed below.

The agencies received some comments that were generally supportive of the QCRE loan criteria in the reproposal and that requested that the agencies not loosen the criteria further because of concerns of the effect that could have on lender behavior, to the detriment of investors in CMBS transactions. One commenter in particular supported the collateral valuation requirements with respect to appraisers.

A number of commenters said the QCRE loan criteria were generally too conservative, noting that only a small number of commercial real estate loans would meet the criteria and that the exemption from risk retention for QCRE loans would be rendered impractical for most sponsors, thereby eliminating incentives to originate QCRE loans and possibly causing funding problems, including for multifamily loans if the Enterprises were to stop providing funding. One commenter claimed that because the QCRE loan criteria is narrow and many CMBS transactions would be subject to risk retention, this could cause rents to rise in the multifamily sector and slow down job creation.

Some commenters asserted that a much lower percentage of commercial real estate loans would qualify as QCRE loans than residential mortgages would qualify as QRMs under the reproposal, and generally recommended that the QCRE loan criteria be crafted to capture a portion of the market similar to that portion of the residential mortgage market captured by the QRM definition. Another commenter suggested that the agencies modify the QCRE loan criteria to follow metrics ''more typical'' of balance sheet lenders such as insurance companies and commercial banks. Another commenter asserted that the proposed QCRE loan criteria would introduce interest rate sensitivity into the CMBS market where it does not currently exist. A few commenters requested that the agencies consider distinct QCRE loan underwriting standards for different commercial real estate sectors. For example, a commenter urged the agencies to allow for a higher loan-to-value ratio for multifamily loans than allowed under the reproposed QCRE loan criteria.

Many of the commenters who generally opposed the proposed QCRE loan definition had specific critiques or suggestions related to each of the categories of QCRE loan criteria, as discussed below.

4. Ability To Repay Criteria and Term

Like the original proposal, the reproposal included a number of criteria that would relate to the borrower's ability to repay in order for a loan to qualify as a QCRE loan. The borrower would have been required to have a DSC ratio of at least 1.25x for qualifying multi-family property loans,[251] 1.5x for qualifying leased QCRE loans,[252] and 1.7x for all other commercial real estate loans. The reproposed standards also would have required reviewing two years of historical financial data and two years of prospective financial data of the borrower. The loan would have been required to have either a fixed interest rate or a floating rate that was effectively fixed under a related swap agreement. The loan documents also would have had to prohibit any deferral of principal or interest payments and any interest reserve fund, resulting in excluding interest-only loans from qualifying as QCRE loans.

The reproposal included a maximum amortization period of 25 years for most commercial real estate loans, and 30 years for qualifying multi-family loans, with payments made at least monthly for at least 10 years of the loan's term. Furthermore, payments made under the

[251] Under the reproposal, a ''qualifying multi-family loan'' would be, generally, a commercial real estate loan secured a residential property with five or more residential dwellings and where at least 75 percent of the net operating income is derived from residential units and tenant amenities, but not other uses. *See* Revised Proposal, 78 FR at 58038.

[252] Under the reproposal, a qualifying leased commercial real estate loan generally means a commercial real estate loan secured by nonfarm real property (other than multi-family and hotel properties) that is occupied by tenants meeting certain criteria. *See* Revised Proposal, 78 FR at 58038.

loan agreement would be required to be based on a straight-line amortization of principal and interest over the amortization period (up to the maximum allowed amortization period, noted above). The minimum loan term could be no less than 10 years and no deferral of repayment of principal or interest could be permitted.

A number of commenters objected to the agencies' reproposed DSC ratios as too conservative, or suggested eliminating or changing the DSC ratio criteria. Some commenters suggested lowering qualifying DSC ratios to a range between 1.25x and 1.5x, or establishing criteria similar to those used by Fannie Mae or Freddie Mac to fund multifamily real estate loans. However, a commenter expressed concern that the reproposed QCRE loan criteria unduly loosened the standard and supported increasing the DSC ratio to 2.4x. A commenter claimed that the DSC and LTV criteria, without taking into consideration other characteristics of a property, would lead to an inappropriate assessment of risk, and that each commercial real estate property has a unique risk profile.

Some commenters supported removing the proposed requirement to examine two years of past borrower data or replacing it with two years of property data, as they stated that many new CRE loans involve stabilized properties purchased by new SPVs and the SPVs would not have two years of historical data. In addition, as these loans are generally non-recourse (or are made to SPVs whose only asset is the subject real estate), only the property and income stream from the property are available to satisfy the loan obligation.

Many commenters supported the requirement for fixed interest rate loans for QCRE loans. However, some commenters suggested expanding the types of derivatives allowed to convert a floating rate into a fixed rate through a rate cap derivative. Some commenters also supported the restrictions on deferrals of principal and interest. However, other commenters supported allowing interest-only loans if those loans had a lower LTV ratio (such at 50 percent).

Many commenters objected to the minimum length and amortization of QCRE loans. These commenters said that 3, 5, and 7-year CRE loans have become common in the industry, and therefore asserted that the proposed minimum 10-year term criterion would inappropriately disqualify numerous loans without much regulatory benefit. A commenter asserted, for example, that default and delinquency data demonstrates that loan term does not materially factor into or increase the likelihood of loss for CMBS investors. Another commenter asserted that the loss rate for shorter term loans is better than for 10-year loans. For similar reasons, these commenters also supported a longer amortization period for QCRE loans, up to 30 years. Other commenters, however, requested that the agencies continue to disqualify interest-only loans from QCRE loans and also to maintain the minimum term at 10 years.

After carefully considering the comments on the underwriting criteria for QCRE loans, the agencies are adopting in the final rule QCRE loan criteria similar to those in the reproposal, with some modifications to address some commenter concerns. The agencies are not changing the DSC ratios from the reproposal, because the agencies believe reducing these requirements would inappropriately allow riskier loans to qualify for a complete exemption from risk retention. As noted in the reproposal, these criteria are consistent with the Federal banking agencies' historical standards for conservative CRE lending.[253]

The agencies are also retaining the requirement not to include interest-only loans or loans with interest-only periods as QCRE loans. The agencies believe that interest-only loans or interest-only periods distort assessment of repayment ability, increase risk at maturity due to lack of principal reduction, and may present increased credit risk, even with a lower LTV ratio and, accordingly, would be inappropriate for qualifying CRE loan treatment.

With respect to maximum amortization periods, the agencies are aware that there are many non-multifamily CRE loans with amortization periods in excess of 25 years. However, allowing a longer amortization period for these loans reduces the amount of principal paid each month on the loan before maturity, which can increase risks related to having to refinance a larger principal amount than would be the case for a loan with a shorter amortization period. Because the agencies believe that loans with a maximum 25-year maturity reflect more stringent underwriting, and believe that exemptions from risk retention should be available only for the most prudently underwritten CRE loans, the agencies are adopting an amortization period of 30 years for multifamily residential QCRE loans and 25 years for all other QCRE loans. The agencies are also making a technical change from requiring straight-line amortizing payments to level payments of principal and interest.

The agencies are also adopting a 10-year minimum maturity for QCRE loans. The agencies believe that loans with terms shorter than 10 years, such as three, five, or seven years, may create underwriting incentives not commensurate with the high credit quality and low risk necessary for a loan to qualify as a QCRE loan. For example, when making a shorter term loan, an originator may focus only on a short timeframe in evaluating the stability of the real estate underlying the loan in an industry that might be at or near the peak of its business cycle. In contrast, a 10-year maturity CRE loan requires underwriting through a longer business cycle for the property, including downturns that may not be captured appropriately when underwriting to a shorter time horizon.

In response to comments on lack of data availability for new loans to SPVs that recently purchased property, the agencies are making modest adjustments to the QCRE loan criteria to facilitate loans to such borrowers. Therefore, the final rule allows originators to use two years of historical data from the property, when the property has two years of operating history.[254] Under this revised standard, properties with less than two years of operating history would still be excluded from the QCRE loan standards because new properties present significant additional risks and loans on those properties generally should not be exempt from risk retention.

Similar to the reproposal, the final rule requires that the interest rate on a QCRE loan be fixed or convertible into a fixed rate using a derivative product. However, in the final rule, the agencies have expanded the allowable derivatives to include interest rate cap derivatives, provided that the loan is underwritten based on the maximum interest rate allowable under the cap, even if the loan is originated at a lower rate. The agencies are not proposing to allow other types of derivatives because they have concluded they are insufficiently transparent for a QCRE loan standard.

5. Loan-to-Value Requirement

The revised proposal would have required that the combined loan-to-

[253] These standards include the ''Interagency Guidelines for Real Estate Lending.'' 12 CFR part 34, subpart D, Appendix A (OCC); 12 CFR part 208, subpart C, Appendix A (FRB); 12 CFR part 365, Appendix A (FDIC).

[254] In the CRE lending context, a sponsor is the party that ultimately controls the property, such as by owning an SPV, which in turn owns the CRE.

value (CLTV) ratio for first and junior loans for QCRE loans be less than or equal to 70 percent and the LTV ratio for the first-lien loan be less than or equal to 65 percent; or that the CLTV and LTV ratios be less than or equal to 65 and 60 percent, respectively, for loans with valuation using a capitalization rate below a certain threshold, as set forth in the reproposal.[255] As discussed in the reproposal, the agencies concluded that these criteria would be appropriate for high quality commercial real estate loans and to help protect securitization investors against losses from declining property values and potential defaults on the CRE loans.[256]

Many commenters recognized that LTV standards are important to ensuring high quality CRE loan underwriting. While some commenters supported the agencies' proposed ratios, others asserted that they were too conservative. Some commenters suggested that higher LTV ratios (generally up to 70 percent) should be allowed in the QCRE loan standards, that the CLTV ratio cap be removed, and that the reduction in LTV and CLTV ratios for loans with certain valuation assumptions be removed. Others, however, suggested more conservative maximum LTV ratio criteria, including a 50 percent LTV ratio suggestion for interest-only loans, if they were to be permitted in the QCRE loan criteria by the agencies. One commenter indicated that the highest quality loans secured in CMBS tended to have lower LTV ratios than would be permitted for the QCRE loan standard, and expressed concern that the agencies may not have been conservative enough in the reproposal.

The agencies have considered the comments on LTV and CLTV ratio requirements for QCRE loans and are adopting the standards as reproposed. The agencies agree with those commenters who generally supported a 65 percent LTV ratio requirement. While the agencies are not adopting a 70 percent LTV ratio requirement, the 65 percent LTV ratio requirement still allows for 70 percent debt financing with up to 5 percent subordinated financing. As discussed in the reproposal, the agencies observe that the more equity a borrower has in a CRE project, the lower the lender or investor's exposure to credit risk and the greater the incentive for the borrower to perform on the loan. Overreliance on excessive subordinated financing instead of equity financing for a CRE property (which increases CLTV ratios) can significantly reduce the cash flow available to the property, as investors in subordinated finance often require high rates of return to offset the increased risk of their subordinate position. The agencies have concluded that a 70 percent CLTV ratio cap is generally appropriate for a low risk QCRE loan standard, which would require the borrower to have at least 30 percent equity in the project to help protect securitization investors against losses from declining property values and potential defaults.

The agencies decline the commenters' suggestion to reduce the maximum LTV ratio requirement for all QCRE loans, as 65 percent is sufficiently conservative for a QCRE loan standard given the other conservative underwriting requirements in the rule. The agencies also decline to adopt a 50 or 55 percent LTV ratio requirement for interest-only loans. As discussed above, the agencies believe interest-only loans, even at lower LTV ratios, present significant risks that would not meet an appropriately conservative QCRE loan underwriting standard.

The agencies are also retaining the requirement that the maximum LTV and CLTV ratios be lowered by 5 percent under certain appraisal conditions, as in the reproposal, with minor technical modifications to address commenter concerns. The ratios are only reduced if the appraisal used to qualify the CRE loan as a QCRE loan used an income approach with a direct capitalization rate, and that rate was lower than the rate permitted by the final rule. The final rule text clarifies that the appraisal used to qualify the CRE loan is not required to use a direct capitalization rate. Generally, as direct capitalization rates decline, values increase. In a lower cap rate environment there is an increase in the amount that can be borrowed given a fixed LTV or CLTV ratio, which is why the lower LTV and CLTV ratios would apply. In addition, to address concerns about appraisals using excessively high cap rates, the agencies are requiring that if a direct capitalization rate was used in an appraisal to qualify the loan as a QCRE loan, the rate must be disclosed to investors in the securitizations.

6. Collateral

The agencies proposed to require an appraisal and environmental risk assessment for every property serving as collateral for a QCRE loan. Commenters strongly supported both the appraisal and environmental risk assessment for all QCRE loan properties. Many commenters indicated this is already standard industry practice. A few commenters expressed the view that the agencies were too strict in requiring specific types of appraisals, such as an income-based appraisal using a discounted cash flow and an appraisal using a direct capitalization rate, rather than allowing a certified appraiser to determine the appropriate valuation method. As noted above, the agencies have made clarifications in the final rule to provide originators and appraisers with more flexibility in determining the appropriate appraisal approaches for a specific property that would be used to meet the QCRE loan standards, while not restricting appraisers from using other valuation methods that they believe are appropriate for the property. The agencies also made a technical change in the final rule to reflect the common appraisal terminology and Uniform Standards of Professional Appraisal Practice terminology for the income approach that is required to be in the written appraisal.

7. Risk Management and Monitoring

The reproposal would have required lenders to obtain a first lien in the property and limited the ability to pledge the property as collateral for other loans. While many commenters supported the first-lien requirement, one commenter supported allowing unlimited junior liens to finance energy-efficient improvements on the CRE property subject to the loan. A commenter requested that the agencies modify the proposed QCRE loan criteria to take into account *pari passu* and junior lien loans, noting that such modifications would not increase the risk of QCRE loans. Some commenters supported the requirement that a borrower obtain insurance on the property up to the property value, while other commenters requested that the requirement be changed to require insurance up to the lesser of the replacement cost of the property improvements or the loan balance.

The agencies are adopting the lien requirements as proposed. While energy-efficient improvements may reduce utility expenses associated with the property, the agencies do not wish the rule to facilitate structures whereby additional financing, even if subordinate, is obtained and thus increases leverage on the property. Regarding the insurance amount, the agencies have concluded that a strong QCRE loan standard would be maintained if the insurance limit in the criteria was changed to no less than the replacement cost of property improvements, in accordance with more customary market practice. After reviewing the related comment, the

[255] Revised Proposal, 78 FR at 58041.

[256] Revised Proposal, 78 FR at 57982.

agencies determined that loan balance was not an appropriate measurement as, in some jurisdictions, a lender may be required to make insurance proceeds available to a borrower and, in those circumstances, a prudent lender would wish to make sure that the proceeds are sufficient to fully repair or replace the insured property.

C. Qualifying Automobile Loans

Similar to the original proposal, the revised proposal included underwriting standards for automobile loans that would be individually exempt from risk retention (qualifying automobile loans, or QALs) if securitized. As in the original proposal, the definition of automobile loan in the reproposal generally would have included only first-lien loans on light passenger vehicles employed for personal use. It specifically excluded loans for vehicles for business use, medium or heavy vehicles (such as commercial trucks and vans), lease financing, fleet sales, and recreational vehicles including motorcycles. As explained in the reproposal, the agencies did not follow recommendations to propose including loans on vehicles more frequently used for recreational purposes, such as motorcycles or business purposes, because the risks and underwriting of those loans would be different than that for vehicles used for personal use. In addition, the reproposed definition did not include automobile leases because, as the agencies explained, leases represent a different set of risks to securitization investors than purchase loans. For example, automobile resale price at the end of the lease period can affect the securitization cash flow, which is not the case for purchase loan securitizations.[257]

While some commenters supported the reproposed definition of automobile loan, others asserted that it continued to be too narrow. Several commenters suggested expanding the definition to include motorcycles, because often they are not used solely as recreational vehicles but as primary transportation and because, as these commenters asserted, motorcycle loans perform as well as auto loans. The commenters asserted that there would be no reason to categorically exclude motorcycles from the QAL definition, even if they could otherwise meet the QAL criteria, by excluding motorcycles from the definition of automobile loan. They also contended that the fact some motorcycles are used for recreational use does not lead to adverse motorcycle loan performance.

Other commenters supported allowing automobile leases to qualify as QALs and recommended certain technical changes to the proposed QAL criteria. In particular, one commenter supported expanding the definition to include fleet purchases or fleet leasing, on the basis that these leases or sales are generally with corporations or government entities with strong repayment histories.

Another comment on the definition of automobile loan raised concerns that it would be difficult for an originator to determine whether an automobile purchase was for consumer or non-consumer use.

The agencies have carefully considered these comments and are adopting the definition of automobile loans for QAL underwriting standards as reproposed. The agencies believe it continues to be appropriate to restrict the definition of automobile loan to light passenger vehicles employed for personal use, not including motorcycles and other vehicles that are commonly used for recreational purposes, as well as everyday personal transportation. While the agencies acknowledge some motorcycle loans may have strong underwriting and risk characteristics similar to those of automobile loans, the agencies have concluded that overall risk profile of motorcycles as a class remains distinct from that of automobiles and, like other recreational vehicles, exhibit overall a higher risk profile. Certain recreational vehicles may also be highly customized before or after purchase, which may reduce resale or recovery value in case of borrower default.

The agencies also have decided not to expand the definition of automobile loan to include vehicles used for business purposes through fleet loans, as the risks and underwriting of such loans differ from those of vehicles used for personal transportation. For example, a car or truck used in a business may endure significantly more wear and depreciate much faster than a vehicle used only for normal household use.

Similarly, for the reasons discussed in the reproposal, the agencies are not expanding the definition of automobile loan to include automobile leases. The agencies remain concerned that the credit risks posed by leases are different than automobile purchase loans, in part (as discussed above) due to resale price risk associated with returned vehicles.

Regarding the comment on difficulties determining consumer purpose, the agencies believe originators or dealers will be able to differentiate between types of customers based on the existing process dealers and lenders must use to comply with TILA, which requires disclosures be provided to borrowers purchasing vehicles for personal use.

The QAL underwriting criteria in the reproposal included requirements regarding a borrower's ability to repay an automobile loan, including with respect to verification of borrower income and a borrower debt-to-income (DTI) ratio of no more than 36 percent. The loan term criteria included a first lien security interest on the vehicle, maximum maturity date, fixed rate interest, and level monthly payments with full amortization of the loan, as well as strict limits on deferral of payments and deferral of initiation of payments. The credit history criteria included verification and minimum credit history standards (such as no bankruptcy or repossession within the previous 3 years). The LTV criteria impose a borrower down payment requirement equal to fees, warranties and 10 percent of the purchase price.[258]

The agencies received a number of comments on the proposed QAL underwriting criteria. Generally the comments expressed concern that very few automobile loans would meet the QAL criteria because they would not fit existing market practices. Some commenters asserted that because the QAL criteria would not be met in existing market practice, the resulting risk retention requirements on automobile securitizations could discourage new issuances and impede liquidity and consumer credit. Others asserted this result would be unduly punitive to automobile securitizations as strong performers during the crisis, especially as compared to the proposed definition of QRM, which would exempt most residential mortgages from risk retention. Some commenters also offered particular suggestions to change the criteria, as discussed further below with respect to each category of criteria. Additionally, some commenters requested that the agencies apply the quantitative portions of the underwriting standards on a pool basis (which would assess underwriting standards on a pool-wide, rather than loan by loan, basis) rather than to individual loans, noting that the homogeneity of securitized automobile loans and their typical characteristics (not subject to interest rate fluctuations or refinancings) would make an exemption from risk retention based on pool level criteria appropriate. The agencies are not adopting this suggestion in the final rule and the final rule only permits the exemption to

[257] See Revised Proposal, 78 FR at 57983.

[258] See Revised Proposal, 78 FR at 57984–57985.

apply to individual loans that meet the QAL criteria. The agencies observe that section 15G of the Exchange Act indicates that the reduction from risk retention for a qualifying asset is limited to the asset itself that is securitized, and does not suggest an exemption for a pool of assets that meets pool-wide underwriting criteria.[259] Accordingly, the final rule provides that the underwriting standards for QAL must be met by each loan for that loan to be exempt from risk retention. Furthermore, the agencies do not believe providing risk retention on a pool basis would further the goals of risk retention and could lead to some of the transparency concerns discussed with respect to unlimited blending of non-qualifying assets with qualifying assets. For example, an exemption based on pool-level underwriting criteria could obscure the true credit quality of the pool in a way that would be difficult for investors to discern because of the potential for wide variation (and varying degrees of document verification) of the underwriting quality of those assets in a pool that did not meet a QAL standard on an individual basis.

1. Ability To Repay Criteria

As noted above, the ability-to-repay criteria for QALs in the reproposal included a DTI ratio not in excess of 36 percent of a borrower's monthly gross income. Under the proposed QAL criteria, originators would also have been required to verify a borrower's income and debt payments using standard methods.

Commenters generally disagreed with the proposed ability-to-repay criteria and requested a higher maximum DTI ratio or elimination of the ratio criterion, on the basis that it is not typically used in current automobile loan underwriting and not using it has not adversely affected automobile loan performance because (commenters claimed) borrowers often prioritize payment of their automobile loans over other debt obligations. Some commenters offered a number of suggested adjustments to the proposed DTI and verification requirements. Other commenters suggested using a payment-to-income (PTI) ratio instead of a DTI ratio because, they claimed, a PTI ratio is a stronger predictor of vehicle loan performance than a DTI ratio and does not involve as many operational burdens as a DTI ratio in providing quick approval of automobile loans, a practice expected by automobile consumers. A commenter also asserted that the proposed DTI requirements would put lenders that rely on the securitization markets for funding at a disadvantage to lenders that do not. Regarding the verification requirements, commenters suggested that if verification of debt and income would be retained as a criterion, originators should only be required to verify those debts listed on a borrower's credit report and rely on borrower stated income without verification.

The agencies have carefully considered these comments, but have concluded that the reproposed DTI criteria, including verification requirements, is essential to determining a borrower's ability to repay, which in turn is essential to a strong consumer underwriting standard. As discussed in the original and revised proposals, the agencies believe that a total exemption from risk retention should be applied only to those loans that meet underwriting criteria associated with strong credit performance. A DTI ratio is a meaningful and comprehensive method for calculating a borrower's ability to repay a loan, while a PTI ratio does not include other potentially significant debts that may reduce a borrower's ability to repay the automobile loan. The agencies have continued to find a 36 percent DTI ratio to be an appropriately conservative measure of ability to repay commensurate with a high quality automobile loan with low credit risk. Regarding verification, the agencies are concerned that not all of a borrower's liabilities may be listed on a credit report and therefore are adopting the verification standards as proposed. In addition, relying on borrower stated income in assessing ability to repay could lead to overstatement of income by the borrower to obtain the loan or by the originator to qualify the loan as a QAL. For these reasons, as well as those discussed in the reproposal, the agencies are adopting the DTI and verification requirements as reproposed.

2. Loan Terms

As noted above, the reproposal included a number of criteria relating to the automobile loan, including that the loan term be calculated based on the origination date and loan payments could not be contractually deferred.

A commenter requested that the loan term be calculated from the date of first payment rather than the origination date. Commenters also requested that loan deferrals be allowed to assist borrowers with hardship events.

The agencies observe that the loan origination date and date of first payment should usually be within a few weeks of each other, which would not materially affect the loan term. The agencies do not view a long period prior to the first payment date as consistent with a strong QAL standard, as it could extend the total loan term for months beyond the limits for maturity the agencies have identified as appropriate for a QAL. While the agencies are retaining the requirement that the contract not allow borrower-initiated payment deferrals, this requirement would not affect subsequent servicer-initiated deferrals that may be triggered by borrower hardships described by the commenters. For these reasons and those discussed in the revised proposal, the agencies are finalizing the loan term criteria as proposed.

3. Reviewing Credit History

In the reproposal, the QAL criteria included an originator verification, within 30 days of originating a QAL, that the borrower was not 30 days or more past due on any obligation; was not more than 60 days past due over the past two years on any obligation; and was not a judgment debtor or in bankruptcy in the past three years. The agencies also proposed a safe harbor enabling the originator to rely on a borrower's credit report showing the borrower complies with the standards. Also, the agencies proposed a requirement that all QALs be contractually current at the closing of the securitization.

Several commenters opposed the proposed credit history criteria and requested that the agencies use instead a credit scoring system based on FICO or a similar system of rating potential borrowers based on credit history, generally using proprietary models. Commenters pointed out that the automobile lending industry has used credit scoring as a primary underwriting tool and would be unable under the QAL criteria to continue to rely on that method for qualifying its best borrowers, and therefore would not be able to use the criteria in order not to lose those borrowers as customers.

Commenters further asserted that the proposed credit history verification criteria would be more burdensome than credit scoring systems, thereby increasing costs for lenders and consumers. A commenter suggested that the criteria would result in conclusions possibly less objective than credit scoring systems. In addition, a few commenters claimed that the QAL credit history standards would exclude many consumers of good credit quality while failing to identify risky consumers, whereas credit scoring models used in the industry would more accurately discriminate between

[259] See 15 U.S.C. 78o–11(c)(1)(B)(ii).

high and low-credit quality borrowers. These commenters asserted that this result would occur because the proposed criteria do not capture many aspects of credit history that are captured by credit scoring models. The commenters also recommended that the agencies adopt a ''vendor-neutral'' approach to incorporating the use of credit scores in the QAL criteria to ensure that there would be no undue reliance on a particular vendor and that credit models are already subject to regulatory oversight (including being the subject of the banking agencies' guidance on model validation) and are rigorously validated. A commenter pointed to the FDIC's large bank assessment rule [260] as an example of how the agencies could adopt a vendor-neutral credit score criterion into the QAL criteria. Some commenters also requested that the agencies define ''contractually current'' and base compliance on the securitization cut-off date rather than the closing date.

The agencies have carefully considered the comments regarding the proposed QAL criteria and the requests to use credit scoring in the criteria. The agencies recognize that much of the current automobile lending industry relies heavily or solely on an internally or externally developed credit scoring system to approve automobile loans. However, the agencies do not believe that a credit score alone is sufficient underwriting for a conservative automobile loan with a low risk of default. Furthermore, the agencies do not believe it is appropriate for purposes of risk retention to establish regulatory requirements that rely on a credit scoring system or combination of proprietary credit scoring systems. The agencies are concerned that, over time, market pressures around meeting QAL criteria or other factors could lead to distortions in the scoring systems that do not appropriately reflect credit risk. Additionally, the agencies have broad policy concerns with linking regulatory underwriting criteria for risk retention purposes to proprietary credit analyses using privately developed models.

Additionally, the agencies believe that a borrower must be contractually current on the loan obligation prior to securitization in order to have a robust underwriting requirement. However, the agencies do not believe it is necessary to establish a definition of contractually current, instead leaving this decision to the contract between the originator and borrower. While the agencies believe a securitization exempt from risk retention should contain only current automobile loans, the agencies will adopt the commenters' suggestion to require evaluation of a loan's status based on the cut-off date or similar date for establishing the composition of the asset pool collateralizing asset-backed securities issued pursuant to a securitization transaction rather than the closing date of the securitization.

For these reasons, the agencies are adopting the credit history criteria as set forth in the revised proposal.

4. Down Payment Requirement

As noted above, the proposed QAL criteria included a down payment requirement whereby automobile loan borrowers would have been required to pay 100 percent of the taxes, fees, and extended warranties in addition to 10 percent of the net purchase price (negotiated price less manufacturer rebates and incentive payments) of the car.

Most comments on the QAL criteria opposed the proposed down payment requirements. The commenters proposed eliminating the down payment entirely, eliminating the down payment requirement for the taxes, fees, and extended warranties, or reducing the down payment requirement on the net purchase price. One of these commenters asserted that prime automobile loans do not require down payments generally because vehicles depreciate rapidly and therefore, lenders generally do not rely significantly on the value of the collateral when underwriting. Furthermore, the commenter asserted that depreciation makes strategic defaults highly unlikely and the short term of most automobile loans makes down payments unnecessary. As with the verification requirements discussed above, the commenter claimed that the down payment requirement in the QAL criteria could put automobile lenders that use securitization financing at a disadvantage as compared to others because of increased burden on consumers in meeting the QAL criteria or having more costs due to risk retention. The commenter also asserted that down payments have far less relevance to the credit risk of automobile loans than they do to residential loans, and that having such a requirement in the QAL criteria would not be consistent with the agencies' position on the QRM definition.

As discussed in the reproposal, the agencies do not believe that an automobile loan with an LTV ratio over 90 percent would be low-risk, and that a customer should put some of the customer's own cash or trade-in value into the deal to reduce risks for strategic default and incent repayment of the loan. The agencies recognize that down payment requirements for prime borrowers are not common in automobile lending, but note that down payments provide an additional level of protection to lenders and investors in automobile securitizations that ensures a low level of credit risk over time as market conditions change.

For the reasons discussed above, the agencies are adopting the QAL criteria as set forth in the reproposal. As explained above, the criteria ensure that QAL loans (that are fully exempt from risk retention) are of very high quality and low credit risk, as required by section 15G of the Exchange Act.[261] The agencies recognize that the QAL standards are in some respects more conservative than those of the QRM definition. The agencies observe, however, that the statutory standards for establishing QAL criteria and the QRM definition are different.[262] Furthermore, as discussed in the reproposal and Part VI of this Supplementary Information, the agencies' decisions with regard to the QRM definition take into consideration the particular dynamics in the residential mortgage market and the effect of that market on the economy. The dynamics in the automobile market are different, as are the effects of the automobile market on the broader financial system and economy, and the agencies have therefore considered the automobile and residential markets separately, together with the differences in the relevant statutory requirements, in establishing the QRM and QAL standards.

VI. Qualified Residential Mortgages

After carefully considering comments received on the reproposed definition of QRM, as well as comments received on the alternative approach to defining QRM, the agencies are adopting, as reproposed, the definition of QRM that aligns with the definition of QM, as defined in section 129C of TILA [263] and the regulations thereunder. The agencies are also providing an exemption from risk retention requirements for certain mortgage loans secured by three-to-four unit residential properties that meet the criteria for QM other than being a consumer credit, as well as an exemption to permit sponsors to blend these exempted mortgage loans with QRMs.

The final rule also includes a separate exemption from risk retention

[260] 12 CFR part 327.

[261] *See* 15 U.S.C. 78o–11(c)(2)(B).

[262] *See id.* at sections 78o–11(c)(2)(B) and 78–11(e)(4)(B).

[263] 15 U.S.C. 1639c.

requirements for certain types of community-focused residential mortgages that are not eligible for QRM status under the rule, similar to the exemptions provided from Regulation Z's ability-to-repay requirement.[264]

The agencies are also including a provision in the final rule that will require the agencies to periodically review the definition of QRM and its effect on the mortgage securitization market, as well as the exemptions provided for the three-to-four unit residential properties and the community-focused residential mortgages. Each of these aspects of the final rule is discussed more fully below.

A. Background

Section 15G of the Exchange Act exempts sponsors of securitizations from the risk retention requirements if all the assets that collateralize the securities issued in the transaction are QRMs.[265] In defining QRM, the statute requires that the agencies take into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default. In addition, the statute requires that the definition of QRM be ''no broader than'' the definition of QM.[266]

In the original proposal, the agencies proposed to define QRM to mean a covered closed-end credit transaction that meets the statutory QM standards [267] as well as additional underwriting criteria. These additional underwriting criteria included minimum LTV and down payment requirements, DTI requirements, and credit history criteria.[268] These additional criteria were developed after the agencies examined extensive data on loan performance from several sources,[269] and were based on several goals and principles the agencies articulated in the original proposal.[270] The agencies also sought to implement the statutory requirement that the definition of QRM be no broader than the definition of a QM, as mandated by the Dodd-Frank Act. [271] At the time of the original proposal, the definition of QM had not been adopted in a final rule.

The majority of commenters opposed the QRM definition in the original proposal, expressing concerns over the 20 percent down payment requirement in particular. These commenters stated that the proposed definition of QRM was too narrow and would constrain credit availability, especially for low- and moderate-income (LMI) borrowers or first-time homebuyers. Many of these commenters urged the agencies to postpone finalizing the QRM definition until after the QM definition was finalized by the CFPB.[272]

As discussed in the reproposal, in deciding to propose a broader QRM definition, the agencies carefully considered the concerns raised by commenters with respect to the original proposed definition, the cost of risk retention, current and historical data on mortgage lending and performance, and the provisions of the final QM definition. The agencies examined updated loan performance information and considered the historical performance of residential mortgage loans with respect to the QM criteria.[273] Further, the agencies considered the potential effects of a QRM definition on credit pricing and access under prevailing market conditions, as well as direct and indirect costs of lending that could be passed on to borrowers and restrict credit availability.[274]

The agencies decided in the reproposal to align the QRM definition with the QM definition for several key reasons, which include meeting the statutory goals and directive under section 15G of the Exchange Act to limit credit risk, preserving access to affordable credit, and reducing compliance burden. Among other factors related to credit risk, the agencies discussed in the reproposal observations that loans that meet the QM criteria have a lower probability of default than mortgages that do not, most notably for loans originated near the peak of the housing bubble that preceded the financial crisis.[275] In addition, the agencies observed that a QRM definition aligned with QM should limit the scope of information asymmetry between sponsors and investors because the QM definition requires, among other things, documentation and verification of income and debt.[276] In addition, the agencies expressed concern about imposing further constraints on mortgage credit availability under the prevailing tight mortgage lending conditions, including through additional criteria that could reduce the credit risk of QRMs further, such as LTV and credit history-related criteria. The agencies also observed that the indirect costs of the interaction of QRM with existing regulations and market conditions is difficult to quantify and has the potential to be large, and that aligning the QRM definition with the QM definition should minimize these costs.[277] Finally, the agencies noted with concern that a QRM definition not aligned with the QM definition could compound the segmentation in the securitization market that may already occur between QMs and non-QMs. It was acknowledged that, while the agencies recognized that the alignment of QRM with QM could also further solidify the non-QM/QM segmentation in the market, the consequences of segmentation due to non-alignment were judged to be more severe.[278]

In reproposing to align the QRM definition with QM, the agencies expressed an intention to review the advantages and disadvantages of this decision as the market evolves, to ensure the risk retention rule best meets

[264] *See* Part VII of this Supplementary Information.

[265] *See* 15 U.S.C. 78o–11(c)(1)(C)(iii).

[266] *See id.* at section 78o–11(e)(4).

[267] Under the original proposal, QRM was limited to a closed-end first-lien mortgage to purchase or refinance a one-to-four family property, at least one unit of which is the principal dwelling of a borrower. In addition, consistent with the QM requirement under section 129C(b)(2) of TILA, the maturity date of a QRM could not exceed 30 years and QRMs would have been prohibited from having, among other features, payment terms that allow interest-only payments, negative amortization, ''balloon payments,'' or prepayment penalties. *See* Original Proposal, 76 FR at 24122.

[268] *See* Original Proposal, 76 FR at 24117.

[269] The agencies reviewed data supplied by McDash Analytics, LLC, a wholly owned subsidiary of Lender Processing Services, Inc., on prime fixed-rate loans originated from 2005 to 2008, which included underwriting and performance information on approximately 8.9 million mortgages; data from the 1992 to 2007 waves of the triennial Survey of Consumer Finances, which focused on respondents who had purchased their homes either in the survey year or the previous year, and included information on approximately 1,500 families; and data regarding loans purchased or securitized by the Enterprises from 1997 to 2009, which consisted of more than 78 million mortgages, and included data on loan products and terms, borrower characteristics (*e.g.,* income and credit score), and performance data through the third quarter of 2010. *See* Original Proposal, 76 FR at 24152.

[270] First, the agencies stated that QRMs should be of very high credit quality, given that Congress exempted QRMs completely from the credit risk retention requirements. Second, the agencies recognized that setting fixed underwriting rules to define a QRM could exclude many mortgages to creditworthy borrowers. Third, the agencies sought to preserve a sufficiently large population of non-QRMs to help enable the market for securities collateralized by non-QRM mortgages to be relatively liquid. Fourth, the agencies sought to implement standards that would be transparent and verifiable to participants in the market. *See* Original Proposal, 76 FR at 24117.

[271] *See* 15 U.S.C. 78o–11(e)(4)(C). At the time of issuance of the original proposal on April 29, 2011, the Board had sole rulemaking authority for defining QM, which authority transferred to CFPB on July 21, 2011, the designated transfer date under the Dodd-Frank Act.

[272] *See* Final QM Rule.

[273] *See* Revised Proposal, 78 FR at 57989–57990.

[274] *See id.* at 57991.

[275] *See id.* at 57989.

[276] *See id.* at 57990.

[277] *See id.* at 57991.

[278] *See id.*

the statutory objectives of section 15G of the Exchange Act.[279]

B. Overview of the Reproposed Rule

The reproposal would have implemented the statutory exemption for QRMs by defining ''qualified residential mortgage'' to mean ''qualified mortgage'' as defined in section 129C of TILA [280] and the regulations issued thereunder.[281] The agencies proposed to align the definition of QRM with QM to minimize potential conflicts between the two definitions and minimize burden in meeting both QM and QRM criteria. Therefore, under the reproposal, a QRM would have been a loan that

(i) Met the general criteria for a QM under section 1026.43(e)(2);

(ii) Met the special criteria of the temporary QM definition under section 1026.43(e)(4);

(iii) Met the criteria for small creditor portfolio loans under section 1026.43(e)(5) or (e)(6); or

(iv) Met the criteria for rural or underserved creditor balloon loans under section 1026.43(f).

This reproposed definition of QRM included any closed-end loan secured by any dwelling (*e.g.,* home purchase, refinances, home equity loans, second or vacation homes), whether a first or subordinate lien. However, the reproposed definition of QRM would not have included any loan exempt from the ability-to-repay requirements and not eligible to be a QM, such as home-equity lines of credit (HELOCs) or reverse mortgages.[282] In addition, loans exempt from the ability-to-repay requirements (such as loans made through state housing finance agency programs and certain community lending programs) were not separately included in the definition of QRM, which under the statute cannot be broader than QM.

The agencies invited comment on all aspects of the reproposed definition of QRM. In particular, the agencies asked whether the reproposed definition would reasonably balance the goals of helping to ensure high quality underwriting and appropriate risk management with the public interest in continuing access to credit for creditworthy borrowers. The agencies also asked whether the definition of QRM should be limited to certain QM loans, such as loans that qualify for the QM safe harbor under 12 CFR 1026.43(e)(1), and if the reproposed definition of QRM should include loans secured by subordinate liens. In addition, the agencies invited comment on an alternative approach to defining QRM (QM-plus approach). Consistent with the statutory requirement that QRM be no broader than QM, the QM-plus approach would have taken the CFPB's definition of QM as a starting point, including the requirements for product type, loan term, points and fees, underwriting, income, and debt verification, and DTI,[283] and added four additional factors: the loan would have had to be a first-lien mortgage loan, be secured by a one-to-four family principal dwelling, and have an LTV ratio of 70 percent or less, and the borrower would have had to meet specific credit history criteria.[284] Under this approach, significantly fewer loans likely would have qualified as QRMs. The agencies asked a number of questions about the QM-plus approach, including whether the benefits of the QM-plus approach would exceed the benefits of the reproposed approach to align the QRM definition to QM, taking into consideration financial stability, credit access, and regulatory burden.[285]

C. Overview of Public Comments

1. Comments Received on the Reproposed QRM Definition

The agencies received a significant number of comments with respect to the reproposed QRM definition, with most commenters expressing support for the reproposal that would align the QRM definition with the QM definition. Generally, these commenters stated that aligning the two definitions would comply with statutory requirements, minimize negative impact on the availability and cost of credit to borrowers (especially LMI borrowers, minority borrowers, and first-time homebuyers), and reduce potential costs, regulatory uncertainty, and compliance burden. Some commenters specifically expressed support for retaining the proposed full alignment with QM so that the proposed QRM definition would not distinguish between loans that receive a ''safe harbor'' or a ''rebuttable presumption'' of compliance under the QM provisions. Some commenters requested clarifications, expressed concerns, or suggested modifications to the proposed QRM definition, including with respect to loans exempted from the ability-to-repay rules under TILA, which are discussed and addressed in more detail in Part VII of this Supplementary Information.

Several commenters opposed aligning the QRM definition with the QM definition, asserting that such an approach would be contrary to statutory intent. These commenters asserted that the definitions of QRM and QM have distinct and different purposes, with the former addressing risk posed to investors and the latter addressing consumer protection. These commenters further stated that broadening the QRM definition would reduce the effect of the risk retention rule with respect to residential mortgages, which comprised one of the main securitization markets that led to the financial crisis. These commenters also expressed concern that the proposed QRM definition would be insufficient to support the credit quality on which a stable mortgage market depends.

Most commenters that opposed the revised definition of QRM supported most, if not all, aspects of the QRM definition in the original proposal and recommended that the agencies adopt that QRM definition instead. These commenters asserted that LTV and credit history requirements are key criteria to ensure that QRMs represent a lower risk of default and the risk retention rules offer some protection to RMBS investors. One commenter asserted that the reproposed QRM definition is based on the same credit reporting requirements used prior to the financial crisis and continues to lack credit reporting verification safeguards to ensure completeness and accuracy. Another commenter suggested that the agencies require a loan-level credit enhancement when QM loans exceed a stated LTV ratio.

A few commenters expressed concern about the potential effects the reproposed QRM definition might have on the market, in that QMs and QRMs could become the only type of mortgage loans made and accepted on the secondary market, or that the market may shift more towards federally insured or guaranteed mortgages.

Finally, commenters requested that the agencies clarify that the requirement that a depositor certify as to the effectiveness of its internal supervisory controls with respect to the process for ensuring that mortgages included in a pool of QRM assets qualify as QRMs does not impose an obligation on sponsors to guarantee that all assets are, in fact, QRMs. As is indicated by the final rule's provision of a buyback option for non-compliant assets, the agencies do not view the certification as requiring that the controls guarantee compliance. Rather, the process must be

[279] *See id.*

[280] 15 U.S.C. 1639c.

[281] *See* Final QM Rule.

[282] See 12 CFR 1026.43(a) and 1026.43(c).

[283] *See* Revised Proposal, 78 FR at 57993–57996.

[284] *See* Revised Proposal, 78 FR at 57993.

[285] *See id.* at 57995.

robust and sufficient to enable the sponsor to carefully evaluate eligibility.

2. Comments Received on the Alternative Approach to QRM

The agencies also received numerous comments on the alternative QM-plus approach. Commenters generally opposed the QM-plus approach, asserting that it would be too restrictive, impose additional compliance costs, and have a negative effect on the availability of affordable credit, especially to LMI borrowers, minority borrowers, and first-time homebuyers. In addition, many commenters expressed concern that a QM-plus approach would slow the return of private capital in the mortgage market because it would increase government and agency involvement in the mortgage market and would make it more difficult for sponsors to assemble a critical mass of QRMs necessary for a securitization. Commenters also expressed concern that mortgages meeting the QM-plus standard would effectively become the primary mortgage product available, thus pushing out other mortgage loans that would qualify as QMs from the mortgage market. Some commenters supported a narrow definition of QRM as reflected in the QM-plus approach, but generally recommended that the agencies adopt the original proposed QRM definition rather than the QM-plus approach.

One commenter specifically expressed concern about the exclusion of secondary liens from the QM-plus approach, asserting that secondary liens facilitate credit to borrowers and benefit the economy. Another commenter asserted that because the QM-plus approach was described only in the preamble, there was insufficient information to determine how the QM-plus approach would be implemented. Some commenters requested specific changes if the agencies were to go forward with the QM-plus approach, including a lower down payment requirement, the exclusion of piggyback loans, and the inclusion of credit scores.

D. Summary and Analysis of Final QRM Definition

1. Alignment of QRM With QM

After carefully considering the comments received, the agencies are adopting a definition of QRM that is aligned with the definition of QM, with some modifications. Accordingly, the final rule defines a QRM to mean a QM, as defined under section 129C of TILA and the regulations issued thereunder, as may be amended from time to time. The agencies also believe it is necessary to periodically review the QRM definition to take into account developments in the residential mortgage market, as well as the results of the CFPB's five-year review of the ability-to-repay rules and the QM definition, which is required under section 1022(d) of the Dodd-Frank Act.[286] Therefore, the final rule also includes a provision that requires the agencies to conduct a periodic review of the definition of QRM, which is discussed more fully below.

The agencies have declined to adopt the QM-plus approach or the approach from the original proposal. While the additional requirements in those two approaches may include useful factors in determining the probability of mortgage default, these additional credit overlays may have ramifications for the availability of credit that many commenters asserted were not outweighed by the corresponding reductions in the likelihood of default from including these determinants in the QRM definition. The agencies are concerned about the prospect of imposing potential additional constraints on mortgage credit availability at this time, especially as such constraints might disproportionately affect LMI, minority, or first-time homebuyers.

The agencies continue to believe that a QRM definition aligned with the definition of QM meets the statutory goals and directive of section 15G of the Exchange Act to limit credit risk and promote sound underwriting. At the same time, the agencies believe this definition will also meet the important goals of preserving access to affordable credit for various types of borrowers and facilitating the return of private capital to the mortgage market. Furthermore, the agencies believe this definition appropriately minimizes regulatory compliance burdens in the origination of residential mortgage loans. The final definition of QRM does not incorporate either an LTV ratio requirement or standards related to a borrower's credit history, such as those in the alternative QM-plus approach discussed in the reproposal. As the agencies explained in the reproposal, although credit history and LTV ratio are significant factors in determining the probability of mortgage default and are important aspects of prudent underwriting, on balance, the agencies believe policy considerations weigh in favor of aligning QRM with QM at this time.

Consistent with the discussion in the reproposal, the agencies believe that a QRM definition that is aligned with the QM definition meets the statutory requirement to take into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default.[287] The criteria of the QM definition support this determination. The QM criteria are structured to help ensure that borrowers are offered and receive residential mortgage loans that borrowers can afford. For example, the QM definition requires full documentation and verification of consumers' debt and income, and generally requires borrowers to meet a DTI threshold of 43 percent or less, which helps to address certain underwriting deficiencies, such as the existence of subordinate liens, and may help to reduce incidents of mortgage fraud. The QM definition also restricts the use of certain product features, such as negative amortization, interest-only and balloon payments (except as provided under special definitions available only to small portfolio creditors) that historical data have shown correlate to higher rates of default. As discussed in the reproposal, formal statistical models indicate that borrowers with mortgages that do not meet these aspects of the QM definition rule exhibit higher probabilities of default.[288] Consistent with these statistical models, historical data indicate that borrowers with mortgages that meet the QM criteria have lower probabilities of default than those with mortgages that do not meet the criteria.[289]

The agencies continue to believe that aligning the QRM and QM definitions at this time will help promote access to affordable credit by minimizing additional regulatory burden and compliance cost and facilitating the return of private capital to the mortgage market. Although mortgage lending conditions appear to have been easing gradually for several quarters, standards overall remain tight, especially for borrowers with lower credit scores or fewer funds for a down payment. In the July 2014 Senior Loan Officer Opinion Survey of Bank Lending Practices, approximately a fourth of all banks surveyed reported that they had eased their standards for prime residential

[286] *See* 12 U.S.C. 5512.

[287] 15 U.S.C. 78o–11(e)(4).

[288] *See* Shane M. Sherlund, ''The Past, Present, and Future of Subprime Mortgages,'' *Finance and Economics Discussion Series,* Paper 2008–63 *available at http://www.federalreserve.gov/pubs/feds/2008/200863/200863pap.pdf*; Ronel Elul, Nicholas S. Souleles, Souphala Chomsisengphet, Dennis Glennon, and Robert Hunt. ''What 'Triggers' Mortgage Default?'' *American Economic Review* 100 (May 2010): 490–494.

[289] For further detail, see Revised Proposal, 78 FR at 57989–57990.

mortgages in the second quarter of 2014.[290] However, approximately half of the banks surveyed reported that their standards for prime conforming residential mortgages were tighter than the midpoint of their longer-term ranges. Even more lenders reported levels of standards that were tighter than historical averages for jumbo, nontraditional, and subprime mortgages. Likewise, the Mortgage Bankers Association's index of mortgage credit availability—designed to capture the credit risk profile of mortgages being offered in the market place—edged up over the first few months of 2014, suggesting that mortgage credit conditions continue to improve. Nonetheless, comparisons of this index to a roughly equivalent proxy for lending conditions in 2004 suggest that credit availability is quite restricted.

An additional manifestation, in part, of tight credit standards is the subdued level of mortgage and housing activity. Mortgage applications in the first six months of 2014, as measured by the Mortgage Bankers Association application indexes, were at the lowest levels since the 1990s. Existing home sales rose only 3.5 percent in the first six months of 2014 and are still roughly 25 percent below their 2004 level. In addition, the private-label RMBS market remains extremely small and limited to mortgages of very high credit quality. In the second quarter of 2014, less than 1 percent of mortgage originations were funded through private-label RMBS.[291] The securitizations that were issued were collateralized by mortgages with a weighted average loan-to-value ratio of around 70 percent and, in most cases, weighted average credit scores greater than 750.

At the same time, several mortgage and securitization regulatory changes have been put in place that increase the amount of information available to investors, improve mortgage underwriting, and increase investors' ability to exercise their rights and obtain recoveries in the event of mortgage default. For example, the CFPB has implemented regulations governing mortgage servicing and loan originator compensation in addition to the ability-to-repay rule and QM standards. The ability-to-repay rule is particularly noteworthy for requiring loan originators to document income, debts, and other underwriting factors, which should in turn provide investors a more complete set of information on which to base their investment decision. The Commission recently adopted revisions to Regulation AB that, among other things, require disclosure in registered RMBS transactions of detailed loan-level information at the time of issuance and on an ongoing basis. These revisions also require that securitizers provide investors with this information three business days prior to the first sale of securities so that they can analyze this information when making their investment decision.[292] The Commission also has proposed rules required by section 621 of the Dodd-Frank Act[293] that would prevent sponsors and certain other securitization participants from engaging in material conflicts of interest with respect to their securitizations.[294] Additionally, the Board, the FDIC, the OCC, the FHFA and the Commission, among other federal agencies, have jointly proposed rules required by section 956 of the Dodd-Frank Act[295] that would enhance reporting and oversight of incentive-based compensation practices and prohibit compensation arrangements that encourage inappropriate risk taking by financial institutions.[296] These regulatory actions are further complemented by efforts on the part of the Enterprises and the industry to improve standards for due diligence, representations and warranties, appraisals, and loan information.[297] Although additional changes may be necessary, taken together, these changes and the other changes to be completed provide additional support for aligning the definition of QRM with that of QM.

2. Periodic Review of the QRM Definition

The agencies recognized that aligning the QRM definition with the QM definition could have potential problematic effects on securitization markets, such as increasing of bifurcation in the mortgage market between QM and non-QM loans. Although the agencies continue to believe the benefits of the alignment at this time outweigh these potential risks, the agencies stated in the reproposal that they intended to review the advantages and disadvantages of aligning the QRM and QM definitions as the market evolves.[298]

The agencies are adopting the reproposed QRM definition, but also recognize that mortgage and securitization market conditions and practices change over time, and therefore, believe it would be beneficial to periodically review the QRM definition. Thus, the agencies are committing in the final rule to review the QRM definition at regular intervals to consider, among other things, changes in the mortgage and securitization market conditions and practices (which may include, for example, the structures of securitizations, the relationship between, and roles undertaken by, the various transaction parties, implications for investor protection and financial stability arising from the relationship between Enterprise markets and private label markets, and trends in mortgage products in various markets and structures), as well as how the QRM definition is affecting residential mortgage underwriting and securitization of residential mortgage loans under evolving market conditions. The agencies also want the opportunity to consider the results of future reviews of, and any changes made to, the QM definition by the CFPB, any additional regulatory changes affecting securitization that are adopted by the agencies, as well as any changes to the structure and framework of the Enterprises and those markets. As a result of these reviews, the agencies may or may not decide to modify the definition of QRM. Any such modification would occur through notice and comment rulemaking. Otherwise, any changes the CFPB makes to the QM definition automatically will modify the QRM definition.

As provided in the final rule, the agencies will commence a review of the definition of QRM not later than four years after the effective date of this rule with respect to securitizations of residential mortgages, five years after the completion of that initial review, and every five years thereafter. In addition, the agencies will commence a review at any time upon the request of any one of the agencies. The agencies will jointly publish in the **Federal Register** notice of the commencement of a review, including the reason for the review if it has been initiated upon the request of one of the agencies. In the

[290] Senior Loan Officer Opinion Survey of Bank Lending Practices, Board of Governors of the Federal Reserve System (July 2014), *available at http://www.federalreserve.gov/boarddocs/SnLoanSurvey/201408/default.htm*.

[291] Mortgage Bankers Association, Quarterly Mortgage Originations Estimates as of July 2014; Intex Solutions, Inc., and Asset-Backed Alert, prime non-agency RMBS issued in second quarter of 2014.

[292] *See* Asset-Backed Securities Disclosure and Registration; Final Rule, 79 FR 57184 (Sept. 24, 2014).

[293] 15 U.S.C. 77z–2a.

[294] *See* Prohibition Against Conflicts of Interest in Certain Securitizations; Proposed Rule, 76 FR 60320 (Sept. 28, 2011).

[295] 12 U.S.C. 5641.

[296] *See* Incentive-Based Compensation Arrangements; Proposed Rule, 76 FR 21170 (Apr. 14, 2011).

[297] *See* Revised Proposal, 78 FR at 57990.

[298] *See* Revised Proposal, 78 FR at 57991.

notice, the agencies will seek public input on the review. The agencies intend to complete each review no later than 6 months after initial notice of the review, subject to extension by the agencies as conditions warrant. Following the review, the agencies will jointly publish a notice that includes their conclusions from the review and, as part of such review, take whatever action is required by applicable law, including the Administrative Procedure Act. If, as a result of the review, the agencies decide to modify the definition of QRM, the agencies will complete such rulemaking within 12 months of publication in the **Federal Register** of the notice disclosing the determination of their review, unless extended by the agencies.

The agencies intend for their initial review of the QRM definition to be completed after the publication of the report of the CFPB's assessment of the ability-to-repay rules, including the QM definition, which the CFPB is required to publish within five years of the effective date of the ability-to-repay rule (*i.e.,* January 10, 2019).[299] However, as noted above, the agencies' initial review will start no later than four years after the effective date of this final rule with respect to residential mortgages. The agencies believe this timing helps to ensure the initial review of the QRM definition benefits from the CFPB's review and course of action regarding the definition of QM, and will help the agencies in determining whether the QRM definition should continue to align fully with the QM definition in all aspects. Furthermore, the agencies expect additional information on the housing and mortgage market will be available at the time the initial review is conducted that would be important in determining whether the then-current QRM definition remains appropriate under prevailing market conditions and continues to meet the requirements and policy purposes of section 15G of the Exchange Act.

3. Definition of QRM

Under the final rule, QRM is defined by aligning it to the definition of QM in the CFPB regulations under section 129C of TILA. A QRM is a loan that is a ''covered transaction'' [300] that meets the general definition of a QM. The general definition of a QM provides that the loan must have:

- Regular periodic payments that are substantially equal;
- No negative amortization, interest only or balloon features;
- A maximum loan term of 30 years;
- Total points and fees that do not exceed 3 percent of the total loan amount, or the applicable amounts specified for small loans up to $100,000;
- Payments underwritten using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment is due;
- Consideration and verification of the consumer's income and assets, including employment status if relied upon, and current debt obligations, mortgage-related obligations, alimony and child support; and
- Total DTI ratio that does not exceed 43 percent.[301]

In addition, in the final rule, the definition of QRM includes loans that meet one of the special types of QMs. One special QM is a covered transaction that meets the CFPB's temporary government QM definition.[302] A loan eligible under the temporary QM definition must satisfy the loan-feature limitations of the general definition of a QM: the loans must have substantially equal periodic payments, with no interest-only, negative amortization or balloon features; must have a maximum 30-year term; and must comply with the points and fees limitations.[303] However, the loans are not subject to the underwriting provisions of the general QM definition, such as the total DTI ratio requirement of 43 percent or less. To be eligible under the CFPB's temporary government QM definition, loans must be eligible for purchase, guarantee or insurance by an Enterprise, U.S. Department of Agriculture (USDA), or Rural Housing Services (RHS).[304]

As discussed in the reproposal, the temporary QM definition with respect to an Enterprise expires once the Enterprise exits conservatorship, but in any case no later than January 21, 2021.[305] Additionally, the temporary QM definition with respect to USDA and RHS expires when USDA and RHS issue their own QM rules or, in any case, no later than January 21, 2021.[306]

Lastly, a QRM is a loan that meets the definitions of QM issued by HUD, the Department of Veterans Affairs (VA), USDA, and RHS under section 129C of TILA. HUD, VA, USDA, and RHS each have authority under the Dodd-Frank Act to define QM for their own loans. Specifically, section 129C(a)(3) of TILA authorizes these agencies to issue rules implementing the QM requirements under section 129C(a)(2) of TILA. USDA and RHS have not yet issued rules under section 129C of TILA

On December 11, 2013, HUD adopted a final rule to define QM for the single family residential loans that it insures, guarantees or administers and which took effect on January 10, 2014.[307] In addition, the VA issued an interim final rule to define QM for loans that it insures or guarantees, with an effective date of May 9, 2014.[308] Accordingly, the final definition of QRM now includes any loan insured, guaranteed or administered as a QM under either the HUD or VA definition of QM, as applicable.

In the final rule, the definition of QRM also includes a loan that meets any of the special QM definitions designed to facilitate credit offered by small creditors.[309] To qualify as a ''small creditor'' eligible under one of these special QM definitions, however, the entity must meet certain asset and threshold criteria and hold the QM loans in portfolio for at least three years, with certain exceptions.[310] Thus, loans meeting these special small creditor QM definitions would generally be ineligible for securitization as QRMs for three years following consummation.

A loan eligible under these special ''small creditor'' QM definitions must meet the general requirements of a QM,[311] except that these loans receive greater underwriting flexibility (*i.e.,* do not need to meet the quantitative DTI threshold of 43 percent or less).[312] Additionally, a loan originated by a qualifying small creditor may contain a balloon feature if the loan is originated during the two-year transition period, which expires January 10, 2016, provided the loan meets certain other criteria, such as a 5-year minimum term.[313] After January 10, 2016, the ability to write a balloon QM will be limited to small creditors that operate

[299] *See* 12 U.S.C. 5512.

[300] *See* 12 CFR 1026.43(b)(1), which defines ''covered transaction'' as a consumer credit transaction that is secured by a dwelling, as defined in section 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under section 1026.43(a) (*i.e.,* HELOCs, time shares, reverse mortgages, temporary or ''bridge'' loans of 12 months or less, and certain construction loans).

[301] *See* 12 CFR 1026.4(e)(2).

[302] *See* 12 CFR 1026.43(e)(4).

[303] *See* 12 CFR 1026.43(e)(2) and 1026.43(e)(4).

[304] *See* 12 CFR 1026.43(e)(4)(ii).

[305] *See* 12 CFR 1026.43(e)(4)(iii).

[306] *See id.*

[307] *See Qualified Mortgage Definition for HUD Insured and Guaranteed Single Family Mortgages,* 78 FR 75215 (Dec. 11, 2013).

[308] *See Loan Guaranty: Ability-to-Repay Standards and Qualified Mortgage Definition Under the Truth in Lending Act,* 79 FR 26620 (May 9, 2014).

[309] *See* 12 CFR 1026.43(e)(5) and (e)(6).

[310] *See* 12 CFR 1026.43(e)(5), (e)(6), and (f).

[311] *See* 12 CFR 1026.43(e)(2).

[312] *See* 12 CFR 1026.43(e)(5), (e)(6), and (f).

[313] *See* 12 CFR 1026.43(e)(6).

primarily in rural or underserved areas.[314]

Consistent with the reproposed definition described above, the final definition of QRM includes any closed-end loan secured by any dwelling (*e.g.,* home purchase, refinances, home equity loans, second or vacation homes, and mobile homes, and trailers used as residences), whether a first or subordinate lien.[315] The final definition of QRM does not include any loan exempt from the ability-to-repay requirements under TILA and the ability-to-repay rules, such as HELOCs, reverse mortgages, timeshares or temporary or ''bridge'' loans of 12 months or less.[316] In addition, the final definition of QRM does not include those loans that were provided a regulatory exemption from the ability-to-repay rules, such as loans made through state housing finance agency programs and certain community lenders. If a loan is not subject to TILA because it is deemed to be extended for a business purpose, it is also not included in the definition of QM (and therefore, is not a QRM). The agencies believe this approach is consistent with the language and intent of section 15G of the Exchange Act, whereby a QRM can be no ''broader than'' a QM.

To provide relief from risk retention for mortgage loans that are collateralized by three-to-four unit residential properties and are not included in the QRM definition because they are deemed not to be covered transactions in the QM definition, but that otherwise meet all the criteria to be a QM, the final rule includes a separate exemption, as discussed further below in Part VII of this Supplementary Information.

Several commenters requested that the agencies clarify that the incorporated QM definition include all statutory provisions, the regulation, the regulation's commentary and appendix, and future supporting guidance to prevent any difficult interpretive questions about whether it is possible for a loan to be a QM and not a QRM. As noted above, the agencies are defining QRM by cross-reference to the definition of QM under section 129C of TILA, and any regulations issued thereunder, to avoid potential conflicts between the definitions of QRM and QM and to facilitate compliance. By cross-referencing to the definition of QM, the final rule incorporates any rules issued under section 129C of TILA that define QM, including any Official Interpretation that interprets such rules.

The rule provides that QRM means QM as amended by the CFPB from time to time. As such, the rule presumes that each amendment to the definition of QM will automatically be incorporated into the definition of QRM unless the agencies act to amend the definition of QRM. However, in exercising their responsibility under section 15G, the agencies will evaluate and collectively consider each amendment to QM to decide whether that amendment meets the requirements of section 15G, and take such action, if any, as is required under applicable law, including the Administrative Procedure Act. The agencies note that they will have notice of proposed CFPB changes to the definition of QM and, thus, will be in a position to commence consideration of possible changes to the QM definition before the CFPB issues a final rule. As noted above, section 13(d) of the rule also requires the agencies to conduct periodic reviews of the definition of QRM.

One commenter requested clarification that all QM definitions would be included in the revised QRM definition and there would be full alignment of QRM and QM throughout the life cycle of a loan. As discussed more fully above, QRM is defined to include a loan that meets any of the definitions of QM issued under section 129C of TILA. The agencies also note that the determination of whether a loan meets the QM definition occurs at consummation; post-consummation events that cannot be reasonably anticipated are not relevant.[317]

Some commenters requested revisions to provisions that are set forth in the QM definition, such as the cap on points and fees or the 43 percent DTI ratio limit. The agencies are required to implement the statutory requirement that the definition of QRM be no broader than the definition of a QM, and therefore cannot expand the definition of QRM in this manner.

Some commenters expressed concern with the reproposal to allow higher-priced QMs to be pooled and securitized with non-higher priced QMs. These commenters asserted that higher-priced means higher risk. The commenters asserted, however, that excluding higher-priced QMs from the definition of QRM would unduly restrict LMI access, and in that case, it may be appropriate to treat these loans as QRMs but that the agencies should prohibit their inclusion in securitizations that consisted of non-higher-priced QMs. The requirements for QMs are the same whether they are higher-priced or lower-priced, and those QM criteria are one of the reasons the agencies defined QRM to mean QM. A higher-priced QM under the CFPB's rule must generally meet the 43 percent DTI ratio requirement, have verified income and assets, generally have points and fees that do not exceed the 3 percent cap, have regular periodic payments, and contain no negative amortization, interest only or balloon features (with exceptions for certain small creditors). Accordingly, the final rule does not distinguish between non-higher priced and higher-priced QMs, and both are eligible to be QRMs without distinction, and therefore, can be pooled together in the same securitization.

A few commenters expressed concern that the reproposed QRM definition would still contain in its practical implementation an implicit bias in favor of a single credit scoring brand, FICO, to the exclusion of others. These commenters stated that the Enterprises exclusively use the credit scoring brand FICO when underwriting and determining eligibility of loans for purchase. These commenters claimed that because the QRM definition incorporates the temporary QM definition by reference, which permits loans that are eligible for purchase, guarantee or insurance by an Enterprise to be QRMs (such loans must also still generally meet the general definition of a QM), there is an implicit bias towards the FICO scoring brand. One commenter further asserted that the unintended bias in favor of a single credit scoring brand could be fixed while still ensuring the QM and QRM definitions are aligned by having FHFA require the Enterprises to revise their policies and practices to accept mortgages underwritten with other validated credit scoring models in addition to the single scoring brand currently permitted.

The agencies note that, under the final rule, the definition of QRM is a loan that meets any of the definitions of QM

[314] *See* 12 CFR 1026.43(f).

[315] *See* 12 CFR 1026.43(e)(2), which provides that QM is a covered transaction that meets the criteria set forth in 12 CFR 1026.43(e)(2), (4), (5), (6) or (f). A ''covered transaction'' is defined to mean ''a consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under [§ 1026.43(a)].''

[316] The Dodd-Frank Act excludes from the term ''residential mortgage loan'' an open-end credit plan or an extension of credit secured by an interest in a timeshare plan. *See* 15 U.S.C. 1602(cc)(5) and 1639c(i). The Dodd-Frank Act does not apply the ability-to-repay provisions of TILA to reverse mortgages and temporary or ''bridge'' loans with a term of 12 months or less. *See* 15 U.S.C. 1639c(a)(8). Therefore they are also exempt from the ability-to-pay rules. Also excluded are most loan modifications, unless the transaction meets the definition of refinancing set forth in section 1026.20(a) of the Final QM rule. For a complete list, *see* 12 CFR 1026.43(a).

[317] *See* 12 CFR 1026.43(c)(1) and corresponding official staff commentary.

issued under section 129C of TILA. Accordingly, the agencies note that a loan is not required to be eligible for purchase by the Enterprises to meet the definition of QRM.[318] Thus, the agencies do not believe the alignment of the QRM definition with the QM definition includes an implicit bias in favor of a single credit scoring brand as there is no requirement in the QM definition that a consolidated credit score be used or obtained.[319] Therefore, the agencies do not believe that any changes to the QRM definition are needed.

A few commenters expressed concern about the potential bifurcation effect on the market if the definitions of QRM to QM were to be aligned, asserting that a QM/QRM loan may become the only type of residential mortgage made and securitized. Some commenters suggested that the agencies provide flexibility for creditors to continue originating non-QM and non-QRM loans by allowing certain loans to qualify for a lower than 5 percent risk retention requirement. As noted in the reproposal, the agencies recognize that aligning the QRM and QM definitions has the potential to intensify any existing bifurcation in the mortgage market that may occur between QM and non-QM loans, as securitizations collateralized by non-QMs could have higher funding costs due to risk retention requirements in addition to potential risk of legal liability under the ability-to-repay rule. The agencies acknowledge this risk but believe that not aligning the QRM and QM definitions would likely result in even more segmentation in the securitization market and higher costs for consumers. Securitization typically is a more cost-effective source of funding when the underlying pool includes a large number of loans. However, QM and non-QM loans are less likely to be combined in a pool because of the different risk profiles and legal liabilities associated with these loans, and QRM and non-QRM loans cannot be combined in a pool under the restrictions of the rule. Accordingly, if the QRM and QM definitions are not aligned and lenders have difficulty amassing a critical number of loans for an asset pool to provide cost effective funding, they may choose a source of funding other than securitization or charge higher mortgage rates to consumers.

A few other suggestions and concerns expressed by commenters include: (i) a request that the agencies acknowledge that first mortgages secured by real property in priority lien states are encompassed within the QRM definition; (ii) caution that the QRM and credit risk retention rule not evolve into a safety and soundness standard in terms of evaluating an individual lender's real estate portfolio; (iii) a request that the QRM definition reflect the value of Homeownership Education and Counseling in reducing default; and (iv) a request to allow non-U.S. originated transactions to benefit from the QRM exemption. The agencies' definition of QRM is adopted as a component of the broader credit risk retention rule that helps address underwriting and incentive alignment concerns in the securitization market and is not a safety and soundness, standard. The agencies' adoption of the QRM definition does not limit or change the definition of QM and, thus, the application of the definition of QM in priority lien states and to non-U.S. originated transactions is limited by the applicability of the QM definition under TILA and not the adoption of the definition of QRM. Similarly, the agencies are not expressly requiring or including as criteria to meet the QRM definition homeownership education and counseling. The agencies also will evaluate a lender's mortgage portfolio on its own merits and do not expect to judge the safety and soundness of a loan or portfolio on whether or not it meets the definition of QRM.

A few commenters also expressed concern about including subordinate liens in the scope of the QRM definition. These commenters were concerned that permitting subordinate liens to be eligible for the QRM exemption would introduce a layer of additional risk, especially where the QRM definition did not contain a LTV ratio requirement. One commenter specifically requested that the agencies reconsider the inclusion of subordinate lien loans in the definition of QRM, noting that second lien holders have been blamed for holding up short sales and complicating efforts to resolve defaulted loans.

The agencies appreciate these commenters' concerns. However, similar to the reasons discussed in the reproposal, the agencies believe aligning the definition of QRM to the QM definition, which includes loans secured by any dwelling, as well as subordinate liens, is appropriate to minimize potential conflicts between the two definitions. The agencies believe allowing subordinate liens to qualify for the QRM exemption also will help preserve credit access. Last, as noted above, the QM definition requires full documentation and verification of consumers' debt and income on all loans, which the agencies believe helps to address risks that may accompany subordinate liens.

E. Certification and Other QRM Issues

In order for a QRM to be exempted from the risk retention requirement, the rule includes evaluation and certification conditions related to QRM status, consistent with statutory requirements and similar to the reproposal. One commenter requested that the requirement for measuring performance data be as of the cut-off date, and not the closing date. In response to commenters' requests, the agencies have modified the performance measurement date from the closing date to the cut-off date or similar date.

While some commenters supported the proposed certification requirements, others suggested that the certification be submitted to the appropriate Federal banking agency or the Commission, and not to the investors, which the commenters said would create additional liability and be functionally burdensome. One commenter suggested that the agencies make clear that these certifications must be retained by the sponsor for a period of no more than five years.

The agencies believe that the certification by the depositor for the securitization is important information that should be disclosed to investors and therefore are not persuaded by the commenters' requests to require that certification be submitted only to the Commission and the appropriate Federal banking agency, if any.

Several commenters expressed the belief that allowing for blended pools of QRMs and non-QRMs would help ensure that a greater variety of loans could be securitized and reduce market fragmentation between QRMs and non-QRMs. These commenters requested that the agencies permit the blending of non-QRMs and QRMs, with the QRMs being exempt from risk retention and the non-QRMs being subject to risk retention (unless otherwise exempt). Under this approach, the sponsor would be required to hold credit risk in proportion to the non-qualifying assets

[318] Some commenters also called on FHFA to require the Enterprises to apply prime loan criteria in the automatic underwriting system so that the combination of aligning the definitions of QRM and QM and temporary QM definition applicable to loans that qualify for purchase or guarantee by the Enterprises does not cause a decline in underwriting standards and assures high underwriting standards. The agencies view this issue to be outside the scope of this joint rulemaking.

[319] The underwriting requirements under the general QM definition and the small creditor QM definitions do not include a requirement for a credit score or an explicit requirement to consider credit history. However, credit history may be included in underwriting for debt and DTI.

in the pool. These commenters expressed the belief that the exemption authority under section 15G(e)(1) and (2) of the Exchange Act was sufficiently broad to permit the agencies to provide a partial exemption for securitizations collateralized by QRMs and non-QRMs. Another approach suggested was that the agencies permit blending exempt mortgage assets (*e.g.,* seasoned loans) and QRMs, with all such securitized assets remaining exempt from risk retention. Under this approach the sponsor would not be required to hold any credit risk since all of the assets in the pool would qualify for an exemption.

Except as described in Part VII of this Supplementary Information with respect to certain mortgage loans secured by three-to-four unit properties that meet the QM criteria other than being an extension of consumer credit, the agencies are not adopting the requested exemption for blended pools of QRMs and non-QRMs. The agencies believe that the breadth of the QRM definition in the final rule, as well as the additional mortgage exemptions discussed in Part VII of this Supplementary Information, should facilitate the return of private capital to the mortgage market and preserve access to affordable credit for various types of borrowers while the mortgage market continues to stabilize. Furthermore, the agencies observe that differences in product features, underwriting standards, and other factors associated with QRMs and non-QRMs generally could tend to reduce the likelihood of investors preferring combined pools. The agencies also note that a reduction in a risk retention requirement for the pool based on inclusion of QRMs would add complexity to the risk retention regime for residential mortgages without evidence of any significant benefit. Finally, the agencies are concerned, given the breadth of the QRM definition, that allowing reduced risk retention for combined pools of QRMs and non-QRMs will not provide sponsors with sufficient incentives to ensure high quality underwriting of the non-QRM mortgages.[320]

F. Repurchase of Loans Subsequently Determined To Be Non-Qualified After Closing

The reproposal provided that, if after the closing of a QRM securitization transaction, it was discovered that a mortgage did not meet all of the criteria to be a QRM due to inadvertent error, the sponsor would be obligated to repurchase the mortgage.[321] While some commenters expressed support for the proposed requirement, one commenter asserted that investors have historically preferred substitution over repurchase, especially when the required repurchase would impact the value of the investment.

Similar to the reproposal, the final rule includes a buyback requirement for mortgages that are determined not to meet the QRM definition by inadvertent error after the closing of the securitization transaction, provided that the conditions set forth in section 13(c) of the rule are met. These conditions are intended to provide a sponsor with the opportunity to correct inadvertent errors by promptly repurchasing any non-qualifying mortgage loans from the pool. In addition, this requirement helps ensure that sponsors have a strong economic incentive to ensure that all mortgages collateralizing a QRM securitization satisfy all of the conditions applicable to QRMs prior to closing of the transactions. As long as the loan met the QRM requirements at the closing of the securitization transaction, however, subsequent non-performance of the loan does not trigger the proposed buyback requirement. For the reasons described above, the agencies are not allowing substitution instead of repurchase in the final rule.

VII. Additional Exemptions

As discussed in Part VI of this Supplementary Information, under the final rule, a loan is eligible for the QRM exemption if it meets one of the QM definitions issued under section 129C of TILA, as may be amended from time to time. Meeting the QM criteria is also one of several ways that a lender can choose to satisfy the minimum underwriting standards for the ability-to-repay requirements under TILA. Because QM loans may provide greater protection from potential legal liability under TILA, many lenders are incentivized to make QMs.[322]

Community-Focused Lending Exemption

In addition to the classes of transactions exempt from the ability-to-repay requirement under the Dodd-Frank Act, such as HELOCs, reverse mortgages, timeshares or temporary or ''bridge'' loans of 12 months or less, the CFPB exempted certain additional categories of loans made by certain lenders from the ability-to-repay rules, under its regulatory authority to exempt classes of transactions to help ensure borrowers continue to have access to affordable mortgage credit. The CFPB used its regulatory authority to exempt these lenders because they typically use flexible and unique underwriting standards that differ from the minimum underwriting standards of the ability-to-repay or QM criteria, and the types of loans exempted are important sources of credit for LMI, minority and first-time homebuyers.[323] Loans exempt from the ability-to-repay requirement fall into the following categories:

- An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5 (HFA).[324]
- An extension of credit made by an entity creditor designated by the U.S. Treasury as Community Development Financial Institution, as defined under 12 CFR 1805.104(h) (CDFI).
- An extension of credit made by a HUD-designated Downpayment Assistance through Secondary Financing Provider (DAP), pursuant to 24 CFR 200.194(a), operating in accordance with HUD regulations.
- An extension of credit made by a HUD-designated Community Housing Development Organization, as defined under 24 CFR 92.2 (CHDO), provided it has entered into a commitment with a participating jurisdiction and is undertaking a project pursuant to HUD's HOME Investment Partnership Program, pursuant to 24 CFR 92.300(a).
- An extension of credit made by certain non-profit organizations that extend credit no more than 200 times

[320] The agencies are not addressing the permissibility of exempting pools blending QRMs and non-QRMs at this time. The agencies note that section15G of the Exchange Act refers to an exemption from risk retention requirements with respect to an asset-backed security if all the assets that collateralize the asset-backed security are QRMs. *See* 15 U.S.C. 78o–11(c)(1)(C)(iii).

[321] Sponsors may choose to repurchase a loan from securitized pools even if there is no determination that the loan is not a QRM. The agencies would not view such repurchases as determinative of whether or not a loan meets the QRM standard.

[322] HELOCs and timeshares are also not subject to any ATR requirement, but not because of a statutory or regulatory exemption. Rather, these loans were never included in the scope of loans defined to be subject to the ATR requirement (*i.e.,* residential mortgage loans).

[323] *See* 15 U.S.C. 1604(f). *See also* 78 FR 35430 (June 12, 2013).

[324] Housing Finance Agency means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.

annually,[325] provide credit only to LMI consumers, and follow their own written procedures to determine that consumers have a reasonable ability to repay their loans (Eligible Nonprofits)

• An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (EESA).[326]

As a result, loans made by these entities do not need to comply with the ability-to-repay requirement, for which QM is one way to comply.

The agencies received several comments regarding some of the above extensions of credit. One commenter requested that the agencies clarify that the proposed exemption from risk retention for asset-backed securities issued or guaranteed by states, municipalities, and public instrumentalities of states (state and municipal securitization exemption)[327] would include asset-backed securities issued by HFAs and other state agencies and collateralized by loans financed by HFAs. This commenter also asked for clarification on whether the use of private servicers in those transactions would affect the availability of the exemption. A few commenters requested that the agencies automatically classify all state HFA loans as QRMs. One commenter observed that the CFPB granted HFA loans an exemption from the ability-to-repay requirement because of a strong record of lending to LMI borrowers, so that compliance with the ability-to-repay requirement would be of little benefit and could impede access to credit by LMI borrowers. Another commenter also asserted that strong credit performance from HFA loans would mean that risk retention is not necessary to protect investors. This commenter further expressed concern that if any HFA loans were subject to risk retention, other securitization structures employed by the HFA that may not technically qualify for the state and municipal securitizations exemption would then be subject to risk retention, with negative consequences for access to credit for underserved borrowers.

Several commenters similarly observed that CDFIs and nonprofit lenders are an important source of mortgage credit for LMI borrowers and play a key role in neighborhood stabilization and community development. These commenters stated that loans made by these entities frequently would not fit the QM criteria because they use flexible underwriting standards that consider an individual borrower's unique circumstances and use homebuyer education and housing counseling to support homeowners throughout the mortgage process. These commenters raised the concern that the risk retention requirement would impose disproportionate compliance burdens on these entities and could be a significant barrier to obtaining investment in these lending programs. Commenters also indicated that exempting these entities from the risk retention requirement would be within the spirit of aligning QRM with QM.

A few other commenters also requested that the agencies similarly consider including under the definition of QRM the other categories of loans exempted by the CFPB from the ability-to-repay rules, or otherwise provide them with an exemption from risk retention. Commenters observed that CDFIs and nonprofit mortgage lenders are an important source of mortgage credit for LMI borrowers and play a key role in neighborhood stabilization and community development. The loans made by these entities are not covered transactions under the ability-to-repay rules (and therefore would not be classified as QMs in any case) but also frequently would not independently meet the type of underwriting standards in the CFPB's QM criteria because they use flexible features that consider an individual borrower's unique circumstances. At the same time, these lenders use homebuyer education and housing counseling to support homeowners throughout the mortgage process. These commenters raised the concern that the risk retention requirements would be a disproportionate compliance burden for these entities and could be a significant barrier to obtaining investment in these lending programs if an exemption was not provided.

Under section 15G of the Securities Act, the definition of a QRM can be ''no broader than'' the definition of a QM. Because there are various and unique underwriting practices used to make the loans described above that are exempted from the ability-to-repay requirement, including significant variations in DTI ratios and other underwriting criteria, it is not possible for the agencies to determine that these loans generally are not ''broader than'' QM. Therefore, the agencies have concluded that they cannot include these community-focused residential mortgages in the definition of QRM.

As discussed previously with respect to other exemptions (or requests for exemptions) from risk retention, however, the agencies may provide an exemption from risk retention if the exemption would: (i) help ensure high-quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (ii) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.[328]

For the reasons discussed below, and in response to concerns raised by commenters, the agencies are providing an exemption from risk retention under section 15G(e) of the Exchange Act for the categories of loans described above (community-focused exempted loans), other than extensions of credit made pursuant to a program authorized by sections 101 and 109 of the EESA. Generally, the agencies have concluded that the loans made by lenders identified above and covered by this exemption meet the requirements for an exemption under section 15G(e) because they are either government-certified, or originated by government-administered programs, or small non-profit programs that have a specific community mission. As the primary mission of these lenders is building and strengthening at-risk communities, or building wealth for LMI families, strong underwriting procedures to maximize affordability and borrower success in keeping their homes has been integral to the programs that originate the community-focused exempted loans. Because the stated mission is integral to the lending programs administered by these lenders, the agencies believe these entities have the incentive to maintain strong underwriting standards to help ensure that they offer affordable loans to the borrowers they serve. The stated mission also helps to protect investors because of the incentives to maintain high underwriting standards and ensure that borrowers are given appropriate and affordable loans. Additionally, exemptions from risk retention for loans made by the above-listed entities serve the public interest because these entities have stated public mission purposes to make safe, sustainable loans available primarily to LMI communities, which helps to improve access to credit on reasonable terms for borrowers and is in

[325] *See* 79 FR 25730 (May 6, 2014). The CFPB's proposed rule would exclude from the 200 originations count certain forgivable or deferred second lien loans.

[326] 12 U.S.C. 5211; 5219.

[327] 15 U.S.C. 78o–11(c)(1)(G)(iii). *See also* Part IV.B of this Supplementary Information.

[328] 15 U.S.C. 78o–11(e)(2).

the public interest. The agencies further observe that these programs are a significant source of credit to LMI communities. To the extent these loans are or will be securitized, an exemption helps to ensure that a risk retention requirement would not impede financing on reasonable terms for such borrowers.

In addition, the agencies below respond to concerns raised by commenters with respect to the exemption under section 15G of the Exchange Act and the final rule for asset-backed securities issued or guaranteed by states and their instrumentalities, or by municipal entities.

i. Housing Finance Agency Program Loans

State HFAs are state lending programs established to help meet the affordable housing needs of the residents of their states. Although their characteristics vary widely, such as their relationship to the state government, most HFAs are independent entities that operate under the direction of a board of directors appointed by each state's governor. They typically administer a wide range of affordable housing and community development programs, including providing first-time homebuyers with loans for existing and new construction and providing financing to build and revitalize affordable housing units, revitalize older neighborhoods and communities, and build shelters and transitional and supportive housing.

If an HFA is a public instrumentality of a state, then an asset-backed security issued or guaranteed by such HFA (or otherwise issued or guaranteed by the state that established the HFA or one of its public instrumentalities) is exempt from the registration requirements under section 3(a)(2) of the Securities Act [329] and should be exempt from risk retention under the state and municipal securitization exemption provided in section 19(b)(3) of the final rule. Further, the use of a private-sector entity to service loans that collateralize such asset-backed securities would not, in and of itself, invalidate this exemption. If an HFA is not a public instrumentality of a state whose securities are exempt from the registration requirements under section 3(a)(2) of the Securities Act, then securitizations issued or guaranteed by the HFA would not automatically be exempt from risk retention unless another exemption applied. Securitizations of loans made by HFAs through private-sector sponsors also would not have an exemption from risk retention. The agencies understand that it is unclear whether there are any HFA securitizations currently occurring that are not covered under that state and municipal securitizations exemption in section 19(b)(3) of the final rule. However, the agencies believe it may be possible that some future securitizations of HFA loans would not be covered and that an exemption under section 15G(e) of the Exchange Act would help ensure that HFA lending programs continue to have access to the financial markets, which in turn should help to ensure affordable access to credit for the borrowers that they serve.

Many HFA underwriting standards are similarly stringent or more stringent than those of the Enterprises or Federal government agencies thorough their program analyses of a consumer's ability to repay.[330] The agencies believe that an exemption under section 15G(e) would encourage HFAs to continue providing sound underwriting and access to affordable credit for their communities. In addition, as discussed above, the state HFA programs are established under public oversight under a specific state legal framework and provide a key source of affordable mortgage credit for LMI and first-time borrowers that is important to sustaining homeownership (and the public benefits that flow therefrom) in many communities.

ii. Community Development Financial Institution Loans

Creditors designated as CDFIs, as defined under Treasury regulations,[331] include such entities as regulated banks, savings associations and credit unions as well as nonprofit funds and institutions.[332] The Community Development Banking and Financial Institutions Act of 1994,[333] defines a CDFI as an entity that (1) has a primary mission of promoting community development; (2) serves an investment area or targeted population; (3) provides development services in conjunction with equity investments or loans directly or through a subsidiary or affiliate; (4) maintains, through representation on its governing board accountability to residents of its area or target population; and (5) is a nongovernmental entity. Treasury's CDFI certification and application regulations incorporate the statutory definition requirements and contain additional requirements for eligibility verification, applications, matching funds, and other standards. These requirements include that a CDFI must be certified by Treasury's CDFI Fund Program.[334] Additionally, at least 60 percent of the financing activities of a CDFI must be targeted to one or more LMI or underserved communities.

Although CDFI securitization volume data is not available, at least one CDFI, the Community Reinvestment Fund, has issued securitizations in the past. Access to the securitization market for CDFIs may help to ensure that these entities can continue to focus on their mission of providing community development and helping LMI borrowers by preserving access to the securitization market. In determining that these entities warranted an exemption from the ability-to-repay rules, the CFPB found that, although these entities do not have standardized underwriting criteria, they use a variety of compensating factors and compare the strength of different underwriting factors, such as credit history and income, to determine if the LMI consumer qualified.[335] Similar to state HFAs, an exemption from risk retention would assist CDFIs in continuing their mission of providing affordable credit to various communities by allowing them to access securitization markets without risk retention requirements if they were to seek such funding in the future. Furthermore CDFIs have a stated mission requirement to serve the community which requires them to maintain strong underwriting standards to protect the individual borrower and the organization, thus lowering risk for the public and investors.

iii. Community Housing Development Organizations and Downpayment Assistance Programs

To be a CHDO, an organization must qualify under HUD's regulations for such designation and re-qualify every time it receives additional set-asides through the HOME program. HUD's HOME Investment Partnership Program [336] requires the allocation of 15 percent of funds to a CHDO to undergo HOME activities. A CHDO has 5 years to allocate the funds and its activities must be in compliance with both HUD's and the awarding jurisdiction's requirements for use of the HOME

[329] 15 U.S.C. 77c(a)(2).

[330] *See* 78 FR 35430, 35432–33 (June 12, 2013).

[331] 12 CFR 1805.104(h).

[332] There were 874 CDFIs as of June 30, 2014. CDFI Fund, CDFI Certification, visited August 1, 2014, available at: *http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=9#certified.*

[333] 12 U.S.C. 1401 *et seq.*

[334] 12 CFR 1805.201.

[335] 78 FR at 35433, 35461 (June 12, 2013).

[336] There are 353 creditors certified by HUD as CHDOs. OneCPD, HUD Exchange, visited on August 1, 2014, available at: *https://www.onecpd.info/search.*

funds.[337] HUD's requirements for being a CHDO and eligible for an award include: (1) being a private nonprofit organization; (2) having among its purposes the provision of decent housing that is affordable to LMI persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws; (3) having a demonstrated capacity for carrying out housing projects assisted with HOME funds; and (4) having a history of serving the community within which housing to be assisted with HOME funds is to be located. Data indicates that lending at CHDOs totaled $64 million in 2011 with just under 500 loans.[338]

As with CDFIs, although CHDOs do not have standardized underwriting criteria, CHDOs use a variety of compensating factors, including an ability-to-repay analysis,[339] in underwriting mortgage loans to ensure that the loan is appropriate for the borrower.[340] CHDOs use these factors in addition to standard underwriting factors, such as credit history and income, to determine if the LMI consumer qualifies.[341] CHDOs' stated mission to serve LMI persons and requirements to qualify under the HUD program helps to ensure strong, but flexible underwriting of loans to sustain their mission.

For its loans to qualify for an exemption from the ability-to-repay rules, a Downpayment Assistance Provider must operate in accordance with applicable HUD regulations.[342] Consequently, a DAP must be listed on HUD's nonprofit organization roster by applying every two years and specifying the FHA activities it proposes to carry out.[343] The organization must comply with all requirements stated in the specific applicable provision of the single family regulations applicable to the FHA activity it undertakes. Similar to CHDOs, DAPs also use underwriting requirements that are tailored to the target LMI populations.[344] The DAPs' mission requires them to tailor their programs to provide lending for LMI populations, but they must also follow HUD and program-specific requirements which encourage sound lending.

[337] 24 CFR 92.254.

[338] 78 FR at 35434, 35461 (June 12, 2013).

[339] 24 CFR 92.254.

[340] *Id.*

[341] *Id.*

[342] 12 CFR 1026.43(a)(3)(v)(B).

[343] There are currently 205 organizations certified as DAPs. HUD, Nonprofits, visited on August 1, 2014, available at: *https://entp.hud.gov/idapp/html/f17npdata.cfm.*

[344] *See* 78 FR 35430, 35464 (June 12, 2014).

iv. Exempt Nonprofit Organizations

To be exempt from the ability-to-repay rules, a nonprofit organization must have an IRS tax-exempt ruling or determination letter as a 501(c)(3) organization, and meet the following additional criteria:[345] (1) during the preceding calendar year, the organization extended a maximum of 200 dwelling-secured loans;[346] (2) during the preceding calendar year, extended credit only to consumers with income that did not exceed the LMI household limit; (3) the extension of credit must be made to consumers with income that does not exceed the LMI household limit; and (4) the creditor has and uses written procedures to determine the consumer's reasonable ability to repay. Similar to the other categories of lenders exempted from risk retention because of their community-focused lending, as discussed above, these entities serve LMI consumers, and as non-profits, seek to provide borrowers with loans that will be affordable to lower risk to the borrower and the non-profit. Additionally, such entities must maintain a written policy on determining ability to repay for the LMI consumers it serves.

For the reasons discussed above, under section 15G(e) of the Exchange Act, the agencies are exempting from risk retention loans made by the above entities that are also exempt from the ability-to-repay rules under the CFPB's Regulation Z. As discussed above, the agencies have concluded that the history of sound underwriting of affordable mortgage credit to LMI and similar communities by these entities, government oversight and program requirements, as well as the public mission of these entities generally supports findings that these exemptions from risk retention would help ensure high-quality underwriting and be in the public interest and for the protection of investors.

The agencies have not concluded that an exemption is warranted for extensions of credit under EESA programs. Unlike the community-focused lending exemption, the EESA exemption covers special, temporary homeownership stabilization and foreclosure prevention programs that were specially enacted in the wake of the financial crisis to promote the recovery and prevent foreclosures. The EESA programs exempted from the ability-to-repay rule are those authorized under the ''Making Home Affordable'' (MHA) provision and the Hardest Hit Fund (HHF), which includes programs such as the Home Affordable Modification Program and the Home Affordable Foreclosure Alternatives Program. Currently the MHA programs are scheduled to expire on December 31, 2015, and the HHF programs are scheduled to expire on December 31, 2017. The rehabilitative purpose of these programs and their limited duration distinguish these programs from the community-focused lending programs. Consequently, the agencies are not exempting these programs from risk retention.

[345] 12 CFR 1026.43(a)(3)(v)(D),

[346] The CFPB has proposed an amendment to exclude from the 200 originations count certain forgivable or deferred second lien loans. *See* 79 FR 25730 (May 6, 2014). Update if CFPB adopts change before this rule is finalized.

Under the final rule, an exemption is provided if the asset-backed securities issued in the transaction are collateralized solely by community-focused residential mortgages and by servicing assets. Alternatively, if the community-focused residential mortgages are included in a pool with other non-QRMs, the amount of risk retention required under section 4(a) of the rule is reduced by a ratio of the unpaid principal balance of the community-focused residential mortgages to the total unpaid principal balance of residential mortgages that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the community-focused residential mortgage asset ratio). This community-focused residential mortgage asset ratio must be measured as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction. In addition, under the final rule, if the community-focused residential mortgage asset ratio exceeds 50 percent, it is treated as 50 percent, which provides the same ability to pool exempt community-focused residential mortgages with other non-QRMs, as permitted for qualifying and non-qualifying commercial loans, CRE loans, and automobile loans.

Additionally, the agencies are committing in the final rule to review the community-focused lending exemption at the same time the agencies review the QRM definition (*i.e.,* no later than four years after the effective date of this rule with respect to securitizations of residential mortgages, five years after the completion of that initial review, and every five years thereafter.) In addition, the agencies will commence a review of the exemption at any time upon the request of any one of the agencies. This will allow the agencies to assess the advantages and disadvantages of the exemption over time and as the market evolves.

Exemption for Certain Mortgage Loans Secured by Three-to-Four Unit Residential Properties

Under Regulation Z, only loans that are ''covered transactions'' are QMs under the definitions adopted by the CFPB.[347] A ''covered transaction'' under Regulation Z means a consumer credit transaction that is secured by a dwelling (including any real property attached to a dwelling) other than those consumer credit transactions exempted from the ability-to-repay rules by the CFPB.[348] A ''dwelling'' is defined under the CFPB rules as a residential structure that contains one-to-four units (and can include various types of properties such as mobile homes and condominiums).[349] However, the Regulation Z Official Interpretations specify that credit extended to acquire a rental property that is or will be owner-occupied within the coming year and that has more than two housing units is deemed to be for business purposes.[350] In that case, the loan is not a consumer credit transaction or covered transaction under Regulation Z, and therefore does not appear to meet the definition of QM.

In aligning the QRM definition with QM, the agencies understood that covered transactions could include owner-occupied, one-to-four unit residential properties.[351] The agencies also understand that market practice is generally to categorize residential mortgage securitizations as those collateralized by one-to-four unit properties, with mortgages of three-to-four unit properties frequently combined in a single collateral pool with one- or two-unit properties.[352] Enterprise guidelines for residential mortgage securitizations also categorize residential mortgages by one-to-four family units.[353] From a credit risk perspective, mortgages secured by three-to-four unit residential properties generally have the same characteristics as mortgages secured by two-unit properties, which are covered transactions under Regulation Z and may qualify as QMs, and therefore QRMs.

The agencies are concerned that the categorical exclusion of some mortgage loans secured by three-to-four unit mortgages from the definition of ''covered transaction'' under Regulation Z (in accordance with the Official Interpretations) and the consequence that such loans appear not to be QMs even if they otherwise meet all of the other QM criteria, would inappropriately constrain funding from the securitization markets for these types of residential mortgages. This in turn could significantly impact the availability of credit to finance the purchase of such properties by owner-occupiers. While the overall volume of mortgage lending secured by three-to-four unit residential properties is small in relation to all residential mortgage lending, there are some metropolitan areas that contain a significant stock of such properties, including in many low-and-moderate income areas.[354]

At the same time, the agencies believe that owner-occupied, three-to-four unit mortgages that meet the same underwriting qualifications under the QM rule as two unit residential mortgages that meet the QM definition have similar risk characteristics. In order to ensure that such mortgage loans have the same access to securitization markets as similar loans secured by one-to-two unit properties, pursuant to the authority in section 15G(e)(1) of the Exchange Act, the agencies are exempting from risk retention requirements owner-occupied mortgage loans secured by three-to-four unit residential properties that meet all the criteria for QM in Regulation Z except for being a ''consumer credit transaction,'' as determined under Regulation Z and the Official Interpretations. These mortgages are referred to in the final rule as ''qualifying three-to-four unit residential mortgage loans.'' To qualify for the exemption, a mortgage loan secured by a three-to-four unit residential property must be owner-occupied and must comply with all of the requirements for qualified mortgages as set forth in sections 1026.43(e) and (f) of Regulation Z as if the mortgage were a covered transaction for purposes of that section.[355]

The agencies recognize that in order for qualifying three-to-four unit residential mortgage loans to benefit from the exemption from risk retention as intended and maintain access to securitization markets and mortgage credit similar to residential mortgages that are QRMs, it must be possible for sponsors to combine these loans with QRMs in a single collateral pool. Therefore, pursuant to their exemptive authority in section15G (e)(1), the agencies are also providing an exemption from risk retention for securitizations that contain both QRMs and qualifying three-to-four unit residential mortgage loans.

To qualify for these combined pools, the final rule requires that depositors comply with the certification requirements for these exempt securitization transactions on the same basis as qualifying residential mortgage securitization transactions that are exempted from risk retention. That is, the depositor must certify that all the assets in the pool meet either the QRM definition or are qualifying three-to-four unit residential mortgage loans that meet the requirements of section 1026.43(e) (other than being deemed a consumer credit transaction). Additionally, a sponsor must comply with the repurchase requirements for these exempt securitization transactions on the same basis as qualifying residential mortgage securitization transactions that are exempted from risk retention, if it is determined after closing that a loan does not meet all of the criteria to be either a QRM or a qualifying three-to-four unit residential mortgage loan.

As discussed previously with respect to other exemptions from risk retention pursuant to section 15G(e)(1) of the Exchange Act, the agencies may issue exemptions, exceptions or adjustments to the risk retention rules, including for classes of institutions or assets relating to the risk retention requirement, if the exemption would: (i) Help ensure high-

[347] *See* 12 CFR 1026.43(e)(2), (e)(4), (e)(5), and (e)(6).

[348] 12 CFR 1026.43(b)(1).

[349] *See* 12 CFR 1026.2(a)(19).

[350] *See* 12 CFR part 1026 Supplement I, paragraph 3(a)–5.i.

[351] *See,* for example, the discussion in the preamble to the 2013 proposal at 57991 (78 FR 57928, 57991 (September 20, 2013)) and the proposed definition of commercial loan, which excluded any loan to a company or an individual for business purposes to purchase or refinance a one-to-four family residential property (78 FR 57928, 58037 (September 20, 2013)).

[352] *See,* for example, *https://www.americansecuritization.com/uploadedFiles/RMBS%20Outline.pdf*

[353] The agencies also note that other regulations categorize mortgages on one-to-four unit (or family) properties as residential mortgages. See, for example, the definition of ''residential mortgage exposure'' in the banking agency capital regulations (12 CFR 3.2, 12 CFR 217.2; 12 CFR 324.2). *See also* similar definitions in 12 CFR 37.2; 12 CFR part 30, appendix C; 12 CFR part 208, appendix C.

[354] In a review mortgages originated from 2005 to 2013, with respect to each vintage, mortgages collateralized by two-to-four unit properties accounted for between 1 percent and 3 percent of the count of residential mortgages and to one to four percent of the dollar volume (at origination). Data sources reviewed do not generally separately identify one-to-four unit properties. (Data reviewed was from Black Knight Data and Analytics (formerly known as McDash)). It is noted that there are some metropolitan statistical areas across the country in which the share of housing units located in 3 and 4 unit properties is significantly higher than the national average of 4.5 percent, based on data from the U.S. Census, 2013 American Community Survey, 1-year estimates.

[355] 12 CFR 1026.43(e).

quality underwriting standards for the securitizers and originators of assets that are securitized or available for securitization; and (ii) encourage appropriate risk management practices by the securitizers and originators of assets, improve the access of consumers and businesses to credit on reasonable terms, or otherwise be in the public interest and for the protection of investors.[356]

The agencies believe that an exemption from risk retention for securitization transactions collateralized by qualifying three-to-four unit residential mortgage loans and an exemption for combining qualifying three-to-four unit residential mortgage loans and QRMs (as well as servicing assets) in a single securitization pool meets these statutory standards for an exemption under section 15G(e)(1). The exemptions will help ensure high-quality underwriting standards for securitizers and originators of assets that are securitized or available for securitization because all the collateral will have to be mortgage loans secured by owner-occupied, one-to-four family residential properties that met all the requirements to be a QM (other than being deemed a loan for business purposes, and therefore not a covered transaction, under the Official Interpretations of Regulation Z (12 CFR part 1026, Supplement I, paragraph 3(a)(5)(i)). As discussed above with respect to the alignment of the QRM and QM definitions, the agencies believe that the underwriting and product standards for QMs limit credit risk and promote sound underwriting.

The agencies also believe that the exemptions will improve the access of consumers and businesses to credit on reasonable terms because they will help preserve access to securitization funding for mortgage loans to owner-occupied three-to-four unit residential properties on the same basis as other one-to-four unit residential properties. The exemptions are also in the public interest and for the protection of investors because they require all the loans in a securitization transaction that benefit from the exemption to meet the underwriting and product standards of QM, which, for the reasons discussed above in Section VI, appropriately limit credit risk for residential mortgages exempted from risk retention.

The agencies also believe that, because the qualifying three-to-four unit residential mortgage loans will meet all QM criteria other than being a consumer credit transaction, these exemptions are not inconsistent with the provisions of section 15G of the Exchange Act that, absent an exemption, require the agencies to apply risk retention to transactions collateralized by both QRMs and non-QRMs.[357] The agencies have separately retained the exemption mandated in section 15G for risk retention for securitization transactions collateralized solely by QRMs, including the certification requirements also specified in the statute.[358] Moreover, the exemption the agencies are providing for securitizations collateralized by both QRMs and qualifying three-to-four unit residential mortgage loans is limited in scope and only permits the mixing of QRMs and non-QRM loans that are subject to the exact same underwriting and product type standards that limit credit risk and define QM. For these reasons, the agencies are adopting the above described exemption from risk retention in the final rule.

Additionally, the agencies are committing in the final rule to review the exemption for qualifying three-to-four unit residential mortgage loans at the same time the agencies review the QRM definition (*i.e.,* no later than four years after the effective date of this rule with respect to securitizations of residential mortgages, five years after the completion of that initial review, and every five years thereafter.) In addition, the agencies will commence a review of the exemption at any time upon the request of any one of the agencies. This will allow the agencies to assess the advantages and disadvantages of the exemption over time and as the market evolves.

VIII. Severability

If any provision of this rule, 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.

IX. 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 Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Federal banking agencies invited comments on how to make the reproposal easier to understand.

X. Administrative Law Matters

A. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA) generally requires that, when promulgating a final rule, an agency publish a final regulatory flexibility analysis that describes, among other items, the impact of the final rule on small entities.[359] However, a regulatory flexibility analysis is not required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities [360] and publishes the certification and a statement of the factual basis for such certification.[361]

As discussed in the Supplementary Information, the final rule generally requires a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party; and prohibits a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain. In certain situations, the final rule allows securitizers to allocate a portion of the risk retention requirement to the originator(s) of the securitized assets, if an originator contributes at least 20 percent of the assets in the securitization. The final rule also provides an exemption for ABS collateralized exclusively by QRM loans.

In determining whether the final rule would have a significant economic impact on a substantial number of small national banks and Federal savings associations, the OCC reviewed December 31, 2013 Call Report data [362] to evaluate the securitization activity and approximate the number of small banking organizations that potentially could retain credit risk under the final rule primarily through the allocation to originator provisions.

As of December 31, 2013, the OCC regulated approximately 1,231 small national banks and Federal savings associations that would be subject to

[356] 15 U.S.C. 78o–11(e)(1) and (2).

[357] The agencies do not otherwise address the permissibility of exemptions for pools blending QRMs and non-QRMs at this time. *See* note 322, *supra,* and accompanying text.

[358] *See* 15 U.S.C. 78o–11(e)(5) and (e)(6).

[359] 5 U.S.C. 604.

[360] The Small Business Administration defines small entity to include national banks or Federal savings associations with assets of $550 million or less. 13 CFR 121.201.

[361] 5 U.S.C. 605(b).

[362] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the OCC evaluated data regarding residential mortgage loan origination for securitization, as this is the primary securitization activity by small banking organizations.

this rule. The Call Report data indicates that approximately 155 small national banks and Federal savings associations originate loans for securitization, predominantly one-to-four family residential mortgages. Using a threshold of 5 percent of small regulated institutions, the final rule could impact a substantial number of small national banks and Federal savings associations.

The vast majority of securitization activity by small banks is in the residential mortgage sector. Many of these banks originate and sell residential mortgage loans to the Enterprises, which satisfy risk retention under the final rule when they securitize those loans and would not allocate risk retention to the originating banks under the final rule. Small banks that originate mortgages for securitization through other channels likely would be exempt from risk retention by another provision in the rule, such as that the loans meet the QRM definition or meet the community focused lending securitization exemption. For these reasons, the OCC concludes that the final rule would not have a significant economic impact on a substantial number of small national banks and Federal savings associations.[363]

Board: In general, section 4 of the Regulatory Flexibility Act (5 U.S.C. 604) requires an agency to prepare a final regulatory flexibility analysis for a final rule unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities (defined as of July 14, 2014, to include banking entities with total assets of $550 million or less) (''small banking entities'').[364] Pursuant to section 505(b) of the Regulatory Flexibility Act, a final regulatory flexibility analysis is not required if an agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Board has considered the potential economic impact of the final rule on small banking entities supervised by the Board in accordance with the Regulatory Flexibility Act. The Board believes that the final rule will not have a significant economic impact on a substantial number of small banking entities supervised by the Board for the reasons described below.

For the reasons discussed in Part II of this Supplementary Information, the final rule defines a securitizer as a ''sponsor'' in a manner consistent with the definition of that term in the Commission's Regulation AB and provides that the sponsor of a securitization transaction is generally responsible for complying with the risk retention requirements established under section 15G. The Board is unaware of any small banking organization under the supervision of the Board that has acted as a sponsor of a securitization transaction[365] (based on December 31, 2013 data).[366] As of December 31, 2013, there were approximately 5,051 small banking organizations supervised by the Board, which includes 4,009 bank holding companies, 298 savings and loan holding companies, 651 state member banks, 23 Edge and agreement corporations and 70 U.S. offices of foreign banking organizations.

The final rule permits, but does not require, a sponsor to allocate a portion of its risk retention requirement to one or more originators of the securitized assets, subject to certain conditions being met. In particular, a sponsor may offset the risk retention requirement by the amount of any eligible vertical risk retention interest or eligible horizontal residual interest acquired by an originator of one or more securitized assets if certain requirements are satisfied, including, the originator must originate at least 20 percent of the securitized assets.[367] A sponsor using this risk retention option remains responsible for ensuring that the originator has satisfied the risk retention requirements. In light of this option, the Board has considered the impact of the final rule on originators that are small banking organizations.

The December 31, 2013 regulatory report data[368] indicates that approximately 757 small banking organizations, 102 of which are small banking organizations that are supervised by the Board, originate loans for securitization, namely ABS issuances collateralized by one-to-four family residential mortgages. The majority of these originators sell their loans to the Enterprises, which retain credit risk through agency guarantees and would not be able to allocate credit risk to originators under this proposed rule. Additionally, based on publicly-available market data, it appears that most residential mortgage-backed securities offerings are collateralized by a pool of mortgages with an unpaid aggregate principal balance of at least $500 million.[369] Accordingly, under the final rule a sponsor could potentially allocate a portion of the risk retention requirement to a small banking organization only if such organization originated at least 20 percent ($100 million) of the securitized mortgages. As of December 31, 2012, only one small banking organization supervised by the Board reported an outstanding principal balance of assets sold and securitized of $100 million or more.[370]

For residential mortgage-backed securitizations, the draft final rule is expected to have minimal impact on the cost of credit for sponsors of non-Enterprise mortgage-backed securitizations that currently retain less than the draft final rule's base risk retention requirement. The markets for those residential mortgages exempted under the draft final rule should be very large, and result in significant liquidity, economies of scale, little to no impact for these securitizations.

[363] The OCC previously concluded that the reproposed rule, if finalized, would not have a significant economic impact on a substantial number of small national banks and Federal savings associations. *See* Section VIII.A, 78 FR 57928 (September 20, 2013). The OCC requested comment and received no responsive comments on that conclusion.

[364] *See* 13 CFR 121.201; *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).

[365] For purposes of the proposed rules, this would include a small bank holding company; savings and loan holding company; state member bank; Edge corporation; agreement corporation; foreign banking organization; and any subsidiary of the foregoing.

[366] Call Report Schedule RC–S; Data based on the Reporting Form FR 2866b; Structure Data for the U.S. Offices of Foreign Banking Organizations; and Aggregate Data on Assets and Liabilities of U.S. Branches and agencies of Foreign Banks based on the quarterly form FFIEC 002.

[367] With respect to an open market CLO transaction, the risk retention retained by the originator must be at least 20 percent of the aggregate principal balance at origination of a CLO-eligible loan tranche.

[368] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the agencies gathered and evaluated data regarding (1) the outstanding principal balance of assets sold and securitized by the reporting entity with servicing retained or with recourse or other seller-provided credit enhancements, and (2) assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank.

[369] Based on the data provided in Table 1, page 29 of the Board's ''Report to the Congress on Risk Retention'', it appears that the average MBS issuance is collateralized by a pool of approximately $620 million in mortgage loans (for prime MBS issuances) or approximately $690 million in mortgage loans (for subprime MBS issuances). For purposes of the RFA analysis, the agencies used an average asset pool size of $500 million to account for reductions in mortgage securitization activity following 2007, and to add an element of conservatism to the analysis.

[370] The FDIC notes that this finding assumes that no portion of the assets originated by small banking organizations were sold to securitizations that qualify for an exemption from the risk retention requirements under the proposed rule.

Commercial loans that have in recent years been securitized through open market CLOs may experience a modest incremental impact in the cost of credit, as mangers of open market CLOs increase their credit exposure to 5 percent using the horizontal risk retention option under the draft final rule. There could also be consolidation in the asset manager industry as a result. The alternative option for lead arrangers to hold risk in the final rule should have minimal impact on the cost of credit (approximately 0–10 basis points) because it would be a vertical interest. An estimate for the incremental increase in the cost of credit for CLO managers is approximately 10–20 basis points, but because risk retention would affect the current business model, costs may be higher than expected.

The draft final rule will also likely have an effect on CMBS transactions. The typical market practice of holding horizontal risk retention of 2.5 percent for conduit transactions will double to 5 percent under the draft rule. The Board estimates that the rule will have a small incremental impact on cost of credit (of up to 10 basis points, approximately) for sponsors subject to the rule, but reducing the leverage of third-party purchasers could significantly improve issuer incentives, and other requirements in the rule could mitigate existing conflicts of interest between third-party purchasers and sponsors who hold residual interests and senior investors. Single-Borrower CMBS, despite a lack of current risk retention in practice, should experience a modest incremental impact on cost of credit (of up to approximately 25 basis points). The rule should have little to no effect on the cost of credit for credit card, prime and non-prime auto, student loan, and less common (esoteric) securitizations, because the amount of credit risk retention typical to these securitizations already being held in the market is generally adequate to satisfy the requirements in the final rule.

In light of the foregoing, the Board does not believe, for the banking entities subject to the Board's jurisdiction, that the final rule would have a significant economic impact on a substantial number of small entities.

FDIC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Act analysis describing the impact of the rule on small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of $550 million or less) or to certify that the rule will not have a significant economic impact on a substantial number of small entities.[371]

As of June 30, 2014, there were 3,573 small FDIC-supervised institutions, which include 3,267 state nonmember banks and 306 state-chartered savings institutions. For the reasons provided below, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities, which in this context are small banking organizations supervised by the FDIC with total assets of $550 million or less. Accordingly, a regulatory flexibility analysis is not required.

As discussed in the Supplementary Information above, section 941 of the Dodd-Frank Act[372] generally requires the Federal banking agencies and the Commission, and, in the case of the securitization of any residential mortgage asset, together with HUD and FHFA, to jointly prescribe regulations, that (i) require a securitizer to retain not less than 5 percent of the credit risk of any asset that the securitizer, through the issuance of an asset-backed security (ABS), transfers, sells, or conveys to a third party; and (ii) prohibit a securitizer from directly or indirectly hedging or otherwise transferring the credit risk that the securitizer is required to retain under section 15G. Although the final rule will apply directly only to securitizers, subject to certain considerations section 15G authorizes the agencies to permit securitizers to allocate at least a portion of the risk retention requirement to the originator(s) of the securitized assets.

Section 15G provides a total exemption from the risk retention requirements for securitizers of certain securitization transactions, such as an ABS issuance collateralized exclusively by QRMs, and further authorizes the agencies to establish a lower risk retention requirement for securitizers of ABS issuances collateralized by other asset types, such as commercial, commercial real estate (CRE), and automobile loans, which satisfy underwriting standards established by the Federal banking agencies and the Commission. The risk retention requirements of section 15G apply generally to a ''securitizer'' of ABS, where securitizer is defined to mean (i) an issuer of an ABS; or (ii) a person who organizes and initiates an asset-backed transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer. Section 15G also defines an ''originator'' as a person who (i) through the extension of credit or otherwise, creates a financial asset that collateralizes an asset-backed security; and (ii) sells an asset directly or indirectly to a securitizer. The final rule implements the credit risk retention requirements of section 15G. The final rule, as a general matter, requires that a ''sponsor'' of a securitization transaction retain the credit risk of the securitized assets in the form and amount required by the final rule. The agencies believe that imposing the risk retention requirement on the sponsor of the ABS—as permitted by section 15G—is appropriate in view of the active and direct role that a sponsor typically has in arranging a securitization transaction and selecting the assets to be securitized. The FDIC is aware of only 22 small banking organizations that currently sponsor securitizations (three of which are national banks, eight of which are state member banks, eight of which are state nonmember banks, and three of which are savings associations, based on June 30, 2014 information) and, therefore, the risk retention requirements of the final rule, as generally applicable to sponsors, will not have a significant economic impact on small banking organizations. Under the final rule a sponsor may offset the risk retention requirement by the amount of any eligible vertical interest or eligible horizontal residual interest acquired by an originator of one or more securitized assets if certain requirements are satisfied, including, the originator must originate at least 20 percent of the securitized assets, as measured by the aggregate unpaid principal balance of the asset pool.[373] In determining whether the allocation provisions of the final rule will have a significant economic impact on a substantial number of small banking organizations, the Federal banking agencies reviewed June 30, 2014, consolidated reports of condition and income (''Call Report'') data to evaluate the securitization activity and approximate the number of small banking organizations that potentially could retain credit risk under allocation provisions of the final rule.[374] As of

[371] *See* 5 U.S.C. 601 *et seq.*

[372] Codified at section 15G of the Exchange Act, 17 U.S.C. 78o–11.

[373] With respect to an open market CLO transaction, the risk retention retained by the originator must be at least 20 percent of the aggregate principal balance at origination of a CLO-eligible loan tranche.

[374] Call Report Schedule RC–S provides information on the servicing, securitization, and asset sale activities of banking organizations. For purposes of the RFA analysis, the agencies gathered and evaluated data regarding (1) the outstanding principal balance of assets sold and securitized by the reporting entity with servicing retained or with recourse or other seller-provided credit

June 30, 2014, the Call Report data indicates that approximately 763 small banking organizations, 493 of which are state nonmember banks, originate loans for securitization which are largely ABS issuances collateralized by one-to-four family residential mortgages. Many of these originators sell their loans either to Fannie Mae or Freddie Mac, which retain credit risk through agency guarantees, and therefore will not be allocated credit risk under the final rule. Additionally, based on publicly available market data, it appears that most residential mortgage-backed securities offerings are collateralized by a pool of mortgages with an unpaid aggregate principal balance of at least $500 million.[375] Accordingly, under the final rule a sponsor could potentially allocate a portion of the risk retention requirement to a small banking organization only if such organization originated at least 20 percent ($100 million) of the securitized mortgages. As of June 30, 2014, only nine small banking organizations supervised by the FDIC reported an outstanding principal balance of assets sold and not securitized by the reporting bank of $100 million or more.[376]

Therefore, the FDIC does not believe that the final rule will result in a significant economic impact on a substantial number of small banking organizations under its supervisory jurisdiction. The FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small FDIC-supervised institutions.

Commission: The Regulatory Flexibility Act of 1980 requires the Commission, in promulgating rules, to consider the impact of those rules on small entities. An initial Regulatory Flexibility Act Analysis was prepared in accordance with the Regulatory Flexibility Act and included in the re-proposing release. The Commission certified in the re-proposing release, pursuant to 5 U.S.C. 605(b), that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received one comment[377] on this certification.

The final rule implements the risk retention requirements of section 15G of the Exchange Act, which, in general, requires the securitizer of asset-backed securities (ABS) to retain not less than 5 percent of the credit risk of the assets collateralizing the ABS.[378] Under the final rule, the risk retention requirements apply to ''sponsors'', as defined in the final rule. Based on the analysis set forth in the original proposal and the reproposal, the Commission continues to believe that the final rule would not have a significant economic impact on a substantial number of small entities.

Some commenters on the re-proposal expressed concern that the re-proposed risk retention requirements could indirectly affect the costs and availability of credit to small businesses and the availability of mortgage credit to low- to moderate-income buyers. The Regulatory Flexibility Act only requires an agency to consider regulatory alternatives for those small entities subject to the final rule. The Commission has considered the broader economic impact of the final rule, including their potential effect on efficiency, competition and capital formation, in the Commission's Economic Analysis below.

For the reasons described above, the Commission again hereby certifies, pursuant to 5 U.S.C. 605(b), that the final rule will not have a significant economic impact on a substantial number of small entities.

FHFA: FHFA has considered the impact of the final rule on the entities that it regulates, none of which come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Pursuant to section 605(b) of the RFA, FHFA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''), 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 agencies published a notice requesting comment on the collection of information requirements in the Original Proposal and the Revised Proposal, and the information collection requirements contained in this joint final rule have been submitted by the FDIC, OCC, and the Commission to OMB for approval under section 3507(d) of the PRA and section 1320.11 of OMB's implementing regulations (5 CFR part 1320). The Board reviewed the rule under the authority delegated to the Board by OMB. While commenters provided qualitative comments on the possible costs of the rule, the agencies did not receive any quantitative comments on the PRA analysis.

2. Information Collection

Title of Information Collection: Credit Risk Retention.

Frequency of response: Event generated; annual.

Affected Public:[379]

FDIC: Insured state non-member banks, insured state branches of foreign banks, state savings associations, and certain subsidiaries of these entities.

OCC: National banks, Federal savings associations, Federal branches or agencies of foreign banks, or any operating subsidiary thereof.

Board: Insured state member banks, bank holding companies, savings and loan holding companies, Edge and agreement corporations, foreign banking organizations, nonbank financial companies supervised by the Board, and any subsidiary thereof.

Commission: All entities other than those assigned to the FDIC, OCC, or Board.

Abstract: The rule sets forth permissible forms of risk retention for securitizations that involve issuance of asset-backed securities, as well as exemptions from the risk retention requirements, and contains requirements subject to the PRA. The information requirements in the joint regulations adopted by the three Federal banking agencies and the Commission

enhancements, and (2) assets sold with recourse or other seller-provided credit enhancements and not securitized by the reporting bank.

[375] Based on the data provided in Table 1, page 29 of the Board's October 2010 Report covering 2002 through 2010 entitled, ''Report to the Congress on Risk Retention,'' it appears that the average RMBS issuance is collateralized by a pool of approximately $620 million in mortgage loans (for prime RMBS issuances) or approximately $690 million in mortgage loans (for subprime RMBS issuances). For purposes of the RFA analysis, the agencies used an average asset pool size of $500 million to account for reductions in mortgage securitization activity following 2007, and to add an element of conservatism to the analysis.

[376] The FDIC notes that this finding assumes that all assets originated by small banking organizations reported on RC–S as being sold, whether or not securitized by the reporting bank, would be subject to the 5 percent risk retention requirement (and would not qualify for an exemption from the risk retention requirements under the final rule).

[377] One commenter urged the agencies to develop the required Regulatory Flexibility Act analysis to accurately assess the impact on small entities of the QM-plus approach to define QRM, if the agencies adopt such approach. The agencies are not adopting the QM-plus approach to define QRM.

[378] *See* 17 U.S.C. 78o–11.

[379] The affected public of the FDIC, OCC, and Board is assigned generally in accordance with the entities covered by the scope and authority section of their respective rule. The affected public of the Commission is based on those entities not already accounted for by the FDIC, OCC, and Board.

are found in sections __.4, __.5, __.6, __.7, __.8, __.9, __.10, __.11, __.13, __.15, __.16, __.17, __.18, and __.19(g). The agencies believe that the disclosure and recordkeeping requirements associated with the various forms of risk retention will enhance market discipline, help ensure the quality of the assets underlying a securitization transaction, and assist investors in evaluating transactions. Compliance with the information collections is mandatory. Responses to the information collections will not be kept confidential and, except for the recordkeeping requirements set forth in sections __.4(d), __.5(k)(3) and __.15(d), there will be no mandatory retention period for the collections of information.

3. Section-by-Section Analysis

Section __.4 sets forth the conditions that must be met by sponsors electing to use the standard risk retention option, which may consist of an eligible vertical interest or an eligible horizontal residual interest, or any combination thereof. Sections __.4(c)(1) and __.4(c)(2) specify the disclosures required with respect to eligible horizontal residual interests and eligible vertical interests, respectively.

A sponsor retaining any eligible horizontal residual interest (or funding a horizontal cash reserve account) is required to disclose: The fair value (or a range of fair values and the method used to determine such range) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction (§ __.4(c)(1)(i)(A)); the material terms of the eligible horizontal residual interest (§ __.4(c)(1)(i)(B)); the methodology used to calculate the fair value (or range of fair values) of all classes of ABS interests (§ __.4(c)(1)(i)(C)); the key inputs and assumptions used in measuring the estimated total fair value (or range of fair values) of all classes of ABS interests (§ __.4(c)(1)(i)(D)); the reference data set or other historical information used to develop the key inputs and assumptions (§ __.4(c)(1)(i)(G)); the fair value of the eligible horizontal residual interest retained by the sponsor (§ __.4(c)(1)(ii)(A)); the fair value of the eligible horizontal residual interest required to be retained by the sponsor (§ __.4(c)(1)(ii)(B)); description of any material differences between the methodology used in calculating the fair value disclosed prior to sale and the methodology used to calculate the fair value at the time of closing (§ __.4(c)(1)(ii)(C)); and the amount placed by the sponsor in the horizontal cash reserve account at closing, the fair value of the eligible horizontal residual interest that the sponsor is required to fund through such account, and a description of such account (§ __.4(c)(1)(iii)).

For eligible vertical interests, the sponsor is required to disclose: The form of the eligible vertical interest (§ __.4(c)(2)(i)(A)); the percentage that the sponsor is required to retain (§ __.4(c)(2)(i)(B)); a description of the material terms of the vertical interest and the amount the sponsor expects to retain at closing (§ __.4(c)(2)(i)(C)); and the amount of vertical interest retained by the sponsor at closing ((§ __.4(c)(2)(ii)).

Section __.4(d) requires a sponsor to retain the certifications and disclosures required in paragraphs (a) and (c) of this section in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after no ABS interests are outstanding.

Section __.5 requires sponsors relying on the master trust (or revolving pool securitization) risk retention option to disclose: The material terms of the seller's interest and the percentage of the seller's interest that the sponsor expects to retain at the closing of the transaction (§ __.5(k)(1)(i)); the percentage of the seller's interest that the sponsor retained at closing (§ __.5(k)(1)(ii)); the material terms of any horizontal risk retention offsetting the seller's interest under § __.5(g), § __.5(h) and § __.5(i) (§ __.5(k)(1)(iii)); and the fair value of any horizontal risk retention retained by the sponsor (§ __.5(k)(1)(iv)). Additionally, a sponsor must retain the disclosures required in § __.5(k)(1) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after no ABS interests are outstanding (§ __.5(k)(3)).

Section __.6 addresses the requirements for sponsors utilizing the eligible ABCP conduit risk retention option. The requirements for the eligible ABCP conduit risk retention option include disclosure to each purchaser of ABCP and periodically to each holder of commercial paper issued by the ABCP conduit of the name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund; and with respect to each ABS interest held by the ABCP conduit, the asset class or brief description of the underlying securitized assets, the standard industrial category code for each originator-seller that retains an interest in the securitization transaction, and a description of the percentage amount and form of interest retained by each originator-seller (§ __.6(d)(1)). An ABCP conduit sponsor relying upon this section shall provide, upon request, to the Commission and the sponsor's appropriate Federal banking agency, if any, the information required under § __.6(d)(1), in addition to the name and form of organization of each originator-seller that retains an interest in the securitization transaction (§ __.6(d)(2)).

A sponsor relying on the eligible ABCP conduit risk retention option shall maintain and adhere to policies and procedures to monitor compliance by each originator-seller (§ __.6(f)(2)(i)). If the ABCP conduit sponsor determines that an originator-seller is no longer in compliance, the sponsor must promptly notify the holders of the ABCP, and upon request, the Commission and the sponsor's appropriate Federal banking agency, in writing of the name and form of organization of any originator-seller that fails to retain, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§ __.6(f)(2)(ii)(A)(1)); the name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of the rule, and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit (§ __.6(f)(2)(ii)(A)(2)); and any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests (§ __.6(f)(2)(ii)(A)(3)).

Section __.7 sets forth the requirements for sponsors relying on the commercial mortgage-backed securities risk retention option, and includes disclosures of: The name and form of organization of each initial third-party purchaser (§ __.7(b)(7)(i)); each initial third-party purchaser's experience in investing in commercial mortgage-backed securities (§ __.7(b)(7)(ii)); other material information (§ __.7(b)(7)(iii)); the fair value and purchase price of the eligible horizontal residual interest retained by each third-party purchaser, and the fair value of the eligible horizontal residual interest that the sponsor would have retained if the sponsor had relied on retaining an eligible horizontal residual interest under the standard risk retention option (§ __.7(b)(7)(iv) and (v)); a description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § __.4 (§ __.7(b)(7)(vi)); the material terms of the applicable transaction documents with respect to the Operating Advisor (§ __.7(b)(7)(vii)); and representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and the factors used to determine that such securitized assets should be included in the pool notwithstanding that they did not comply with the representations and warranties (§ __.7(b)(7)(viii)). A sponsor relying on the commercial mortgage-backed securities risk retention option is also required to provide in the underlying securitization transaction documents certain provisions related to the Operating Advisor (§ __.7(b)(6)), to maintain and adhere to policies and procedures to monitor compliance by third-party purchasers with regulatory requirements (§ __.7(c)(2)(A)), and to notify the holders of the ABS interests in the event of noncompliance by a third-party purchaser with such regulatory requirements (§ __.7(c)(2)(B)).

Section __.8 requires that a sponsor relying on the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation risk retention option must disclose a description of the manner in which it has met the credit risk retention requirements (§ __.8(c)).

Section __.9 sets forth the requirements for sponsors relying on the open market CLO risk retention option, and includes disclosures of a complete list of, and certain information related to, every asset held by an open market CLO (§ __.9(d)(1)), and the full legal name and form of organization of the CLO manager (§ __.9(d)(2)).

Section __.10 sets forth the requirements for sponsors relying on the qualified tender option bond risk retention option, and includes disclosures of the name and form of organization of the qualified tender option bond entity, a description of the form and subordination features of the retained interest in accordance with the disclosure obligations in section __.4(d), the fair value of any portion of the retained interest that is claimed by the sponsor as an eligible horizontal residual interest, and the percentage of ABS interests issued that is represented by any portion of the retained interest that is claimed by the sponsor as an eligible vertical interest (§ __.10(e)(1)–(4)). In addition, to the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the sponsor must disclose the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained outside of the qualified tender option bond entity by the sponsor or its majority-owned affiliates (§ __.10(e)(5)).

Section __.11 sets forth the conditions that apply when the sponsor of a securitization allocates to originators of securitized assets a portion of the credit risk the sponsor is required to retain, including disclosure of the name and form of organization of any originator that acquires and retains an interest in the transaction, a description of the form, amount and nature of such interest, and the method of payment for such interest (§ __.11(a)(2)). A sponsor relying on this section is required to maintain and adhere to policies and procedures that are reasonably designed to monitor originator compliance with retention amount and hedging, transferring and pledging requirements (§ __.11(b)(2)(A)), and to promptly notify the holders of the ABS interests in the transaction in the event of originator non-compliance with such regulatory requirements (§ __.11(b)(2)(B)).

Sections __.13 and __.19(g) provide exemptions from the risk retention requirements for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans that meet certain specified criteria, including that the depositor with respect to the securitization transaction certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that the controls are effective (§§ __.13(b)(4)(i) and __.19(g)(2)), and that the sponsor provide a copy of the certification to potential investors prior to sale of asset-backed securities in the issuing entity (§§ __.13(b)(4)(iii) and __.19(g)(2)). In addition, §§ __.13(c)(3) and __.19(g)(3) provide that a sponsor that has relied upon the exemptions will not lose the exemptions if, after closing of the transaction, it is determined that one or more of the residential mortgage loans does not meet all of the criteria; provided that the depositor complies with certain specified requirements, including prompt notice to the holders of the asset-backed securities of any loan that is required to be repurchased by the sponsor, the amount of such repurchased loan, and the cause for such repurchase.

Section __.15 provides exemptions from the risk retention requirements for qualifying commercial loans that meet the criteria specified in Section __.16, qualifying CRE loans that meet the criteria specified in Section __.17, and qualifying automobile loans that meet the criteria specified in Section __.18. Section __.15 also requires the sponsor to disclose a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention (§ __.15(a)(4)). In addition, the sponsor is required to disclose descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (‘‘qualifying assets’’), and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral (§ __.15(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ __.15(a) and (b) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after no ABS interests are outstanding (§ __.15(d)).

Sections __.16, __.17 and __.18 each require that: The depositor of the asset-backed security certify that it has evaluated the effectiveness of its internal supervisory controls and concluded that its internal supervisory controls are effective (§§ __.16(a)(8)(i), __.17(a)(10)(i), and __.18(a)(8)(i)); the sponsor is required to provide a copy of the certification to potential investors prior to the sale of asset-backed securities in the issuing entity (§§ __.16(a)(8)(iii), __.17(a)(10)(iii), and __.18(a)(8)(iii)); and the sponsor must promptly notify the holders of the asset-backed securities of any loan included in the transaction that is required to be cured or repurchased by the sponsor, including the principal amount of such loan and the cause for such cure or repurchase (§§ __.16(b)(3), __.17(b)(3), and __.18(b)(3)). Additionally, a sponsor must retain the disclosures required in §§ __.16(a)(8), __.17(a)(10) and __.18(a)(8) in its records and must provide the disclosure upon request to the Commission and the sponsor's appropriate Federal banking agency, if any, until three years after no ABS interests are outstanding (§ __.15(d)).

4. Estimated Paperwork Burden

Estimated Burden per Response:

§ __.4—Standard risk retention: horizontal interests: recordkeeping—0.5 hours, disclosures—5.5 hours; vertical interests: recordkeeping—0.5 hours, disclosures—2.0 hours; combined horizontal and vertical interests: recordkeeping—0.5 hours, disclosures—7.5 hours.

§ __.5—Revolving master trusts: recordkeeping—0.5 hours; disclosures—7.0 hours.

§ __.6—Eligible BCP conduits: recordkeeping—20.0 hours; disclosures—3.0 hours.

§ __.7—Commercial mortgage-backed securities: recordkeeping—30.0 hours; disclosures—20.75 hours.

§ __.8—Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS: disclosures—1.5 hours.

§ __.9—Open market CLOs: disclosures—20.25 hours.

§ __.10—Qualified tender option bonds: disclosures—6.0 hours.

§ __.11—Allocation of risk retention to an originator: recordkeeping 20.0 hours; disclosures 2.5 hours.

§§ __.13 and __.19(g)—Exemption for qualified residential mortgages and qualifying 3-to-4 unit residential mortgage loans: recordkeeping—40.0 hours; disclosures 1.25 hours.

§ __.15—Exemption for qualifying commercial loans, commercial real estate loans, and automobile loans: disclosure—20.0 hours; recordkeeping—0.5 hour.

§ __.16—Underwriting standards for qualifying commercial loans: recordkeeping—40.5 hours; disclosures—1.25 hours.

§ __.17— Underwriting standards for qualifying CRE loans: recordkeeping—40.5 hours; disclosures—1.25 hours.

§ __.18—Underwriting standards for qualifying automobile loans: recordkeeping—40.5 hours; disclosures—1.25 hours.

FDIC

Estimated Number of Respondents: 32 sponsors; 153 annual offerings per year.

Total Estimated Annual Burden: 3,235 hours.

OCC

Estimated Number of Respondents: 35 sponsors; 166 annual offerings per year.

Total Estimated Annual Burden: 3,444 hours.

Board

Estimated Number of Respondents: 22 sponsors; 102 annual offerings per year.

Total Estimated Annual Burden: 2,114 hours.

Commission

Estimated Number of Respondents: 181 sponsors; 854 annual offerings per year.

Total Estimated Annual Burden: 17,768 hours.

Commission's explanation of the calculation:

To determine the total paperwork burden for the requirements contained in this rule the agencies first estimated the universe of sponsors that would be required to comply with the disclosure and recordkeeping requirements. The agencies estimate that approximately 270 unique sponsors conduct ABS offerings each year. This estimate was based on the average number of ABS offerings from 2004 through 2013 reported by the ABS database Asset-Backed Alert for all non-CMBS transactions and by Commercial Mortgage Alert for all CMBS transactions. Of the 270 sponsors, the agencies have assigned 8 percent of these sponsors to the Board, 12 percent to the FDIC, 13 percent to the OCC, and 67 percent to the Commission.[380]

Next, the agencies estimated the burden per response that is associated with each disclosure and recordkeeping requirement, and then estimated how frequently the entities would make the required disclosure by estimating the proportionate amount of offerings per year for each agency. In making this determination, the estimate was based on the average number of ABS offerings from 2004 through 2013 and, therefore, the agencies estimate the total number of annual offerings per year to be 1,275.[381] The agencies also made the following additional estimates:

- 12 offerings per year will be subject to disclosure and recordkeeping requirements under § __.11, which are divided equally among the four agencies (*i.e.,* 3 offerings per year per agency);
- 100 offerings per year will be subject to disclosure and recordkeeping requirements under §§ __.13 and __.19(g), which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 8 offerings per year subject to §§ __.13 and __.19(g) for the Board; 12 offerings per year subject to §§ __.13 and __.19(g) for the FDIC; 13 offerings per year subject to §§ __.13 and __.19(g) for the OCC; and 67 offerings per year subject to §§ __.13 and __.19(g) for the Commission); and
- 120 offerings per year will be subject to the disclosure requirements under § __.15, which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 10 offerings per year subject to § __.15 for the Board, 14 offerings per year subject to § __.15 for the FDIC; 16 offerings per year subject to § __.15 for the OCC, and 80 offerings per year subject to § __.15 for the Commission. Of these 120 offerings per year, 40 offerings per year will be subject to disclosure and recordkeeping requirements under §§ __.16, __.17, and __.18, respectively, which are divided proportionately among the agencies based on the entity percentages described above (*i.e.,* 3 offerings per year subject to each section for the Board, 5 offerings per year subject to each section for the FDIC; 5 offerings per year subject to each section for the OCC, and 27 offerings per year subject to each section for the Commission).

To obtain the estimated number of responses (equal to the number of offerings) for each option in subpart B of the rule, the agencies multiplied the number of offerings estimated to be subject to the base risk retention requirements (*i.e.,* 1,055) [382] by the sponsor percentages described above. The result was the number of base risk retention offerings per year per agency. For the Commission, this was calculated by multiplying 1,055 offerings per year by 67 percent, which equals 707 offerings per year. This number was then divided by the number of base risk retention options under subpart B of the rule (*i.e.,* nine) [383] to arrive at the estimate of the number of offerings per year per agency per base risk retention option. For the Commission, this was calculated by dividing 707 offerings per year by nine options, resulting in 79 offerings per year per base risk retention option.

The total estimated annual burden for each agency was then calculated by multiplying the number of offerings per year per section for such agency by the number of burden hours estimated for the respective section, then adding these

[380] The allocation percentages among the agencies have been adjusted based on the agencies' latest assessment of more recent data, including the securitization activity reported by FDIC-insured depository institutions in the June 30, 2014 Consolidated Reports of Condition.

[381] Based on ABS issuance data from Asset-Backed Alert on the initial terms of offerings, supplemented with information from Commercial Mortgage Alert. This estimate includes registered offerings, offerings made under Securities Act Rule 144A, and traditional private placements. This estimate is for offerings that are not exempted under §§ _.19(a)–(f) and _.20 of the rule.

[382] Estimate of 1,275 offerings per year minus the estimate of the number of offerings qualifying for an exemption under §§ __.13, __.15, and 19(g) (220 total).

[383] For purposes of this calculation, the horizontal, vertical, and combined horizontal and vertical risk retention methods under the standard risk retention option are each counted as a separate option under subpart B of the rule.

subtotals together. For example, under § __.10, the Commission multiplied the estimated number of offerings per year for § __.10 (*i.e.,* 79 offerings per year) by the estimated annual frequency of the response for § __.10 of one response, and then by the disclosure burden hour estimate for § __.10 of 6.0 hours. Thus, the estimated annual burden hours for respondents to which the Commission accounts for the burden hours under § __.10 is 474 hours (79 × 1 × 6.0 hours = 474 hours).

For disclosures made at the time of the securitization transaction,[384] the Commission allocates 25 percent of these hours (1,773 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours, (5,319 hours), the Commission uses an estimate of $400 per hour for external costs for retaining outside professionals totaling $2,127,750. For disclosures made after the time of sale in a securitization transaction,[385] the Commission allocated 75 percent of the total estimated burden hours (1,565 hours) to internal burden for all sponsors. For the remaining 25 percent of these hours (522 hours), the Commission uses an estimate of $400 per hour for external costs for retaining outside professionals totaling $208,650.

FHFA: The rule does not contain any FHFA information collection requirement that requires the approval of OMB under the Paperwork Reduction Act.

HUD: The rule does not contain any HUD information collection requirement that requires the approval of OMB under the Paperwork Reduction Act.

C. Commission Economic Analysis

1. Introduction

Pursuant to Section 15G (Section 15G) of the Securities Exchange Act of 1934 (Exchange Act), as added by Section 941(b) of the Dodd-Frank Act, the agencies are jointly prescribing regulations that (i) require a sponsor to retain not less than 5 percent of the credit risk of any asset that the sponsor, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party, and (ii) prohibit a sponsor from directly or indirectly hedging or otherwise transferring the credit risk that the sponsor is required to retain under Section 15G and the agencies' implementing rules.[386] Section 15G also exempts certain types of securitization transactions from these risk retention requirements and authorizes the agencies to exempt or establish a lower risk retention requirement for other types of securitization transactions.

The Commission is sensitive to the economic impacts, including the costs and benefits, of its rules. The discussion below addresses the economic effects of the final rule, including the likely benefits and costs of the rule as well as their effects on efficiency, competition and capital formation. Some of the economic effects stem from the statutory mandate of Section 15G, whereas others are affected by the discretion the agencies have exercised in implementing this mandate. These two types of impacts may not be entirely separable to the extent that the agencies' discretion is exercised to realize the goals of Section 15G.

Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact on competition that the rules would have, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.[387] Further, Section 3(f) of the Exchange Act requires the Commission,[388] when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

While we make every reasonable attempt to quantify the economic impact of the rule that we are adopting, we are unable to do so for several components of the new rule due to the lack of available data. We also recognize that several components of the new rule are designed to change existing market practices and as a result, existing data may not provide a basis to fully assess the rule's economic impact. Specifically, the rule's effects will depend on how sponsors, issuers, investors, and other parties to the transactions (*e.g.,* originators, trustees, underwriters, and other parties that facilitate transactions between borrowers, issuers and investors) will adjust on a long-term basis to this new rule and the resulting evolving conditions. The ways in which these parties could adjust, and the associated effects, are complex and interrelated. As a result, we are unable to predict them with specificity nor are we able to quantify them at this time.

2. Broad Economic Considerations

a. Policy Goals of the Risk Retention Requirement

Asset-backed securitizations play an important role in the creation of credit by increasing the amount of capital available for the origination of loans and other receivables[389] through the transfer of those assets—in exchange for new capital—to other market participants. The intended benefits of the securitization process include reduced cost of credit and expanded access to credit for borrowers, ability to match risk profiles of securities to investors' specific demands, and increased secondary market liquidity for loans and other receivables.[390]

Asset-backed securitizations can also generate significant risks to the economy. Indeed, many observers claim that the ''originate-to-distribute'' model underlying securitization for some asset classes contributed to the onset of the financial crisis.[391] The informational asymmetries in securitization markets generated between the borrower and the investors in the asset-backed securities, who are the ultimate providers of credit, give rise to the moral hazard problem of loan originators or securitization sponsors incurring risks in the underwriting or securitization process for which they did not bear the consequence. Loan originators who establish and enforce the underwriting standards are best able to understand the potential consequences of their credit decisions. If loan originators hold the loans they originated, then they are more likely to exercise appropriate care in evaluating the credit quality of the loan, including the borrower's ability to

[384] These are the disclosures required by §§ _.4 (c)(1)(i) and (iii), and (c)(2)(i) (as applicable to horizontal interests, vertical interests, or any combination of horizontal and vertical interests); §§ _.5(k)(1)(i), (iii) and (iv) ; _.6(d); _.7(b)(7)(i) through (viii); _.8(c); _.9(d); 10(e); _.11(a)(2); _.13(b)(4)(iii); _.15(a)(4) and (b)(3); _.16(a)(8)(iii); _.17(a)(10)(iii); _.18(a)(8)(iii); and __.19(g)(2).

[385] These are the disclosures required by §§ _.4 (c)(1)(ii) and (c)(2)(ii) (as applicable to horizontal interests, vertical interests, or any combination of horizontal and vertical interests); §§ _.5(k)(1)(ii); _.6(f)(2)(ii); _.7(c)(2)(B); _.9(d)(1); _.11(b)(2)(B); _13(c)(3); _.16(b)(3); _17(b)(3); _.18(b)(3); and __.19(g)(3).

[386] *See* 15 U.S.C. 78o–11(b), (c)(1)(A) and (c)(1)(B).

[387] 15 U.S.C. 78w(a).

[388] 17 U.S.C. 78c(f).

[389] While most securitized assets are loans or other extensions of credit, other assets are routinely securitized. This discussion focuses on loans because they are the most commonly securitized assets and their impact is more widespread. The Commission believes that the impact on other kinds of receivables should be similar.

[390] *See, e.g.,* Board of Governors of the Federal Reserve System, ''Report to the Congress on Risk Retention'' (October 2010) and Financial Stability Oversight Committee, ''Macroeconomic Effects of Risk Retention Requirements'' (January 2011).

[391] Purnanandam, ''Originate-to-Distribute Model and the Sub-Prime Mortgage Crisis'', 24(6) Rev. Fin. Stud. 1881–1915 (2011).

repay. However, if the originator can sell the loan, the originator has less incentive to screen borrowers carefully. Likewise, sponsors have limited incentives to accurately assess the actual risks of the loans they purchase from originators because the consequences of their decisions are passed on to the investors in the asset-backed securities. Further, because both loan originators and asset-backed securities sponsors are compensated on the basis of volume rather than quality of underwriting, there are economic incentives to originate and securitize as many loans as possible. Consequently, default risk is less important to the market participants originating and securitizing loans.

In addition to this fundamental moral hazard problem, other features of the securitization market contribute to the risks posed by these financing transactions. The ultimate investors in the securitized assets have access to less information about the credit quality and other relevant characteristics of the borrowers than either the originator or sponsor, and may not have effective recourse when the assets do not perform as expected. Moreover, in the early 2000s, demand from securitization sponsors for additional assets to securitize encouraged originators to focus capital towards higher risk assets, including the sub-prime residential mortgage market, which serves the mortgage needs of individuals who are less creditworthy than typical home buyers.[392] The effects of these incentives were compounded by the entry of new market originators and sponsors with varying amounts of experience and capacity to effectively evaluate credit risk.

The moral hazard problem may be especially severe when there are inadequate processes in place to elicit sufficient transparency about the assets or securitization structure to overcome informational differences. In these cases, the securitization process can misalign incentives so that the welfare of some participants is maximized at the expense of other participants. Many of these risks are not adequately disclosed to investors in securitizations, an issue compounded as sponsors introduce increasingly complex structures.[393] The financial crisis also revealed that credit rating agencies had generally not appropriately evaluated the credit risk of certain asset-backed securities. In particular, credit rating agencies assigned high ratings on the senior classes of RMBS or CDOs backed by RMBS that were subsequently not supported by the actual performance of those securities.[394]

Requiring the retention of credit risk by sponsors of asset-backed securities is intended to address these misaligned incentives by requiring originators and sponsors of asset-backed securities to internalize some of the same risks faced by the investors in those asset-backed securities. For example, risk-averse sponsors will be reluctant to absorb the uncertain payouts associated with high-risk loans. In order to limit their exposure to loans with high default risk, these sponsors will be incentivized to scrutinize loan originators' loans and underwriting procedures more carefully.[395] Under the risk retention requirements, securitized loans should therefore be less subject to the lax lending and credit enhancement standards that imposed large losses on asset-backed securities (in particular, RMBS) investors during the financial crisis. By requiring sponsors to retain credit exposure to the securitized assets, risk retention is intended to ensure that sponsors have ''skin in the game'' and thus are economically motivated to be more judicious in their selection of loans being securitized, thereby helping to produce asset-backed securities collateralized by loans with higher underwriting standards. More generally, when a sponsor or originator with better information about the securitized loans is required to hold some of the same risks being transferred to asset-backed securities investors, those investors should be subject to lower risks. When a sponsor shares the risk of the securitized loans with asset-backed securities investors, the sponsor is more likely to be aware of the exact nature and scope of the potential risks, and therefore to be in a position to provide those investors with more accurately represented risks.

b. Potential Economic Effects of Requiring Risk Retention

Mandatory risk retention reflects a belief that sponsors of asset-backed securities have a more accurate assessment of the underlying assets' risk properties than can be attained by their ultimate investors. This information asymmetry can have adverse market effects to the extent that sponsors seek to profit from their differential information. Some observers contend that during the financial crisis, sponsors sold assets that they knew to be very risky, without conveying that information to ABS investors. One way to offset information asymmetries is to require that sponsors retain some ''skin in the game,'' through which loan performance can affect sponsors' profits as much as—or more than—those of the ABS investors.

The standard forms of risk retention in the final rule include a vertical option, a horizontal option, or a combination of a vertical option and a horizontal option. Sponsors' choice of a particular risk retention option will depend on tradeoffs among direct costs, the sponsors' required returns on capital, and investors' uncertainty about the quality of the underlying loan pool. In turn, the overall economic impact of requiring risk retention will depend on the form in which it is held by sponsors.[396] A sponsor relying exclusively on the vertical risk retention option will hold 5 percent of every tranche, from the senior tranche to the residual interest, and shares the same credit risk as investors in every tranche. The retention of a 5 percent vertical slice of ABS securities ties the sponsor's profits to the underlying assets' default rates. For any given securitization of assets characterized by a fixed set of underlying loan interest rates, the ABS

[392] Dell'Ariccia, Deniz and Laeven, ''Credit Booms and Lending Standards: Evidence from the Subprime Mortgage Market'', Journal of Money, Credit and Banking, vol. 44, no. 2–3, pp. 367–384, March-April 2012; Mian and Sufi, ''The Consequences of Mortgage Credit Expansion: Evidence from the 2007 Mortgage Default Crisis'', Quarterly Journal of Economics 2009, vol. 124, no. 4, pp. 1449–1496.

[393] Furfine, Complexity and Loan Performance: Evidence from the Securitization of Commercial Mortgages, Review of Corporate Finance Studies, v. 2, no. 2, March 2014, pp. 154–187; Ghent, Torous, and Valkanov, Complexity in Structured Finance: Financial Wizardry or Smoke and Mirrors? (2013, Working Paper, available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2325835*).

[394] *See, e.g.,* Benmelech and Dlugosz, 2010, The Credit Rating Crisis, Chapter 3 of NBER Macroeconomics Annual 2009, Vol. 24, pp. 161–207, Acemoglu, Rogoff and Woodford, eds., University of Chicago Press; Bolton, Freixas and Shapiro, ''The Credit Ratings Game'', Journal of Finance, vol. 67, no. 1, pp. 85–111, February 2012; Griffin and Tang, ''Did Subjectivity Play a Role in CDO Credit Ratings?'', Journal of Finance, vol. 67, no. 4, pp. 1293–1328, August 2012.

[395] Likewise, if the originator were required to share in the pool's risk, or were required to buy back loans that did not meet pre-specified underwriting standards, the originator could be incentivized to exercise more care in making loans. However, because such arrangements are unfunded, they may not effectively mitigate the moral hazard problem described above, and investors may not benefit from the credit protection because the obligor under the unfunded obligations may not be able to fulfill those obligations when they come due. Consequently, the agencies have not recognized these arrangements as acceptable forms of risk retention.

[396] *See* Section 5.a of this Economic Analysis for further detailed discussion of the economic effects associated with the different options of standard risk retention. Section 5.b discusses additional forms of risk retention available to sponsors of certain securitization structures, including revolving pool securitizations, tender option bonds, and asset-backed commercial paper conduits.

sponsor earns less if the loans default at a higher-than-expected rate. This gives the sponsor an enhanced incentive to be sure that the loan interest rates accurately reflect the loans' expected default rates. ABS investors can therefore be more confident that their ABS interests will perform as promised when the ABS sponsor retains a vertical slide of risk. In other words, the information asymmetry between sponsor and investors is ameliorated by the risk retention requirement, which leads the sponsor to make sure that loan interest rates reflect their expected default probabilities.[397]

An eligible horizontal residual interest, or EHRI, is the most subordinated tranche(s) of a securitization, which exposes the owner to a *disproportionate* share of losses from the securitized loans.[398] A sponsor holding an EHRI will suffer greater default losses from a given percentage investment than from an equal percent investment in a vertical slice, making it a more expensive form of risk retention. Horizontal risk retention is nonetheless the norm in some market segments because ABS investors' beliefs about the quality of loans in the securitization are influenced by the ABS sponsor's exposure to credit losses. Investors can therefore be more confident that the underlying assets are high-quality when the sponsor retains a larger subordinate exposure.[399] In other words, the sponsor ''signals'' to ABS investors its belief that defaults will be low by taking a larger, but junior, claim on the portfolio's cash flows.

In general, although ABS investors may find it difficult to assess the securitized assets' risks on their own, sponsors can signal the quality of the underlying assets by purchasing a first loss position at a price that reflects its fundamental value only if loan defaults turn out to be low. Relatively larger residual interest tranches may be required when the assets being securitized suffer from more acute information asymmetries or higher uncertainty about their true default risk. Horizontal risk retention forces the sponsor to accept more default losses than an equal investment in vertical retention. But the increased risk exposure permits a horizontal risk position to signal the pool's asset quality and, in turn, permits the securitization transaction to provide an economically efficient source of funding for the sponsor.

We anticipate that the ultimate market impact of the credit risk retention requirements will depend in part on the individual sponsor's level of risk aversion and required return on invested capital. Some sponsors may find that holding relatively more risky assets would adversely impact their financial position. The risk retention requirement will incentivize these sponsors to securitize assets with lower default risk. Securitizing assets with lower anticipated losses would lessen the resulting credit risk exposure for asset-backed securities investors. Higher-quality loan pools with more homogenous risk characteristics would give sponsors more incentive to provide accurate information about the pool's risk characteristics. With less uncertainty about the quality of securitized assets, investors should be willing to pay more or demand a lower rate of return for bearing the credit risk, which in turn could reduce borrowing costs for underlying borrowers. Thus, the net effect of reducing the moral hazard in a securitization transaction may be to reduce the cost of loans for more creditworthy borrowers.

The risk retention requirements, however, will not necessarily increase the quality of all loan pools offered for securitization. Asset-backed securities investors may fund riskier pools provided that they are properly compensated (in the form of higher promised tranche returns). The market's appetite for risk could lead sponsors to package high-risk loans that can generate high expected returns. Sponsors with higher cost of capital may also need to earn higher return on their retained tranches, which requires that the underlying loans have higher interest rates, which tend to be riskier loans. Less creditworthy borrowers could be required to pay higher loan interest rates than in the past to the extent that the risk retention requires sponsors to more accurately account for the potential losses associated with these riskier loans.

The effect of risk retention on borrowing costs will also depend on how securitization investors react to the requirements of the final rule. If risk retention increases investor confidence that incentives are properly aligned in the securitization market, this should increase their likelihood of participating in the market, making more capital available and increasing competition for issuances of asset-backed securities. As a result, the higher prices paid for issuances will mitigate the costs imposed on sponsors to retain credit risk. In the past, asset-backed security investors did not always have accurate, timely or accessible information about securitized asset quality and in certain instances were misled about the quality of those assets.[400] If risk retention results in the transmission of more accurate information about loan quality to investors (*e.g.,* through pricing of EHRIs, the level of horizontal risk retention, or fair value disclosures) and allows asset-backed security investors to distinguish lower quality loans from higher quality loans, then risk should be more efficiently priced in asset-backed security markets.

Quantifying the potential impact of the credit risk retention on borrowing rates of the loans underlying the asset-backed securities will depend on the tradeoff between the costs associated with financing the additional capital required by sponsors to fund the retained risk and its effect on the pricing of the asset-backed securities. For example, two studies by the Federal Reserve Bank of New York estimate the potential impact of risk retention on the cost of residential mortgage borrowing by estimating the change in interest rates on securitized loans required to compensate for the sponsors' risk retention requirements.[401] The analyses suggest that incremental increases to sponsors' rate of return requirements for securitizations of residential mortgage loans with higher levels of risk retention are relatively modest, approximately 0–30 basis points.[402] These estimates

[397] If sponsors are risk-averse, vertical risk retention might also discourage them from securitizing higher-risk loans. See below.

[398] Sponsors also share credit risk in a horizontal manner through overcollateralization, subordinated management fees, or other arrangements. Many of such arrangements are unfunded, however, and consequently, the agencies have not recognized them as acceptable forms of risk retention.

[399] Two papers provide evidence that risk retention by a lead underwriter affects the risks perceived by other, less informed, members of the syndicate. Victoria Ivashina, 2009, Asymmetric information effects on loan spreads, Journal of Financial Economics, vol. 92, no. 2, pp. 300–319; Amir Sufi, 2007, Information Asymmetry and Financing Arrangements: Evidence from Syndicated Loans, The Journal of Finance, vol. 62, no. 2, pp. 629–668.

[400] *See* Piskorski, Seru, and Witkin, 2013, Asset Quality Misrepresentation by Financial Intermediaries: Evidence from RMBS Market, NBER Working Paper No. 18843; and Griffin and Maturana, Who Facilitated Misreporting in Securitized Loans? Journal of Finance, forthcoming. Both papers find evidence of mortgage misreporting in non-agency RMBS by both originators and underwriters; this misreporting was not priced by investors at issuance and yet strongly predicted future RMBS losses.

[401] *See* appendix A of the 2013 Reproposal, 78 FR at 58019.

[402] This assessment assumes that the underlying loan pool characteristics are accurately disclosed and with sufficient detail for investors to properly assess the underlying risk. Such a scenario would be reflective of the risk retention requirements solving the moral hazard problem that might otherwise result in the obfuscation of intrinsic risks to the ultimate investors. These results also rely on

Continued

suggest that the underlying loans would need to have an interest rate approximately 0.25 percent higher. As discussed above, however, risk retention will likely influence the composition of loan pools. Although the New York Fed studies do not incorporate this effect, perceptibly higher quality loan pools will require less costly financing or lower yielding asset-backed securities. Thus, the underlying loan interests rates may rise (due to more risk being borne by the sponsor or high opportunity cost of capital for retained capital) or fall (because the pool is higher quality). By contrast, to the extent that riskier loans continue to be securitized even with the requirement to retain risk, the underlying loan interest rates are likely to rise. Developments that make riskier loans more expensive, at a cost commensurate to their intrinsic risk, will improve the efficiency of capital markets.

Requiring sponsors to retain risk in the portfolios of assets they securitize could impose significant costs on financial markets. Currently, sponsors who do not retain 5 percent of the securitization deploy those funds to other uses, such as repaying lines of credit used to fund securitized loans, holding other assets or making new loans, which may earn a different interest rate and have a different risk exposure. Tying up capital as a result of the imposition of risk retention requirements could pose an opportunity cost to sponsors who do not currently retain risk and could limit the volume of securitizations that they can sponsor. These costs would likely be passed on to borrowers, either in terms of increased borrowing costs or loss of access to credit. In particular, borrowers whose loans do not qualify for an exemption from risk retention (*e.g.,* those loans that do not meet the underwriting criteria for being deemed a qualified asset) could face increased borrowing costs, or be priced out of the loan market, thus restricting their access to credit. As a result, there could be a negative impact on capital formation by loan originators to the extent that it impedes the flow of capital from ABS investors, particularly if credit is denied to creditworthy borrowers. More generally, if the costs are deemed by sponsors to be significant enough that they would no longer be able to earn a sufficiently high expected return by sponsoring securitizations, this form of supplying capital to lenders would decline.

specific assumptions about the return on equity demanded by different types of sponsors.

The net impact of requiring credit risk retention on capital markets and the costs of credit will ultimately depend on the availability of alternative arrangements for transferring capital to lenders and the costs of transferring capital to sponsors. For example, the impact of the potential decrease in the use of securitizations in the residential mortgage market would depend on the cost and availability to lenders of alternative mortgage funding sources, and the willingness of these sponsors to retain the full burden of the risks associated with credit risk retention and securitization. To the extent there are funding alternatives, and these funding alternatives can provide funding to lenders on terms similar to those available as a result of sponsors' use of the securitization markets, the impact of the substitution of these alternatives for securitizations would likely be minimal. Similarly, to the extent that sponsors can find sources of capital at costs similar to the returns paid on retained interests in securitizations, the impact of risk retention requirements would likely be minimal. Currently, there is no relevant and available empirical evidence to reliably estimate the cost and consequence of either such outcome.

c. The Impact of Asset-Level Disclosure and Other Requirements of Revised Regulation AB

On August 27, 2014, the Commission adopted significant revisions to Regulation AB and other rules governing the offering process, disclosure, and reporting for asset-backed securities.[403] Among other things, these revisions require that prospectuses for registered offerings of asset-backed securities backed by residential and commercial mortgages, auto loans and leases, or debt securities (including resecuritizations), and ongoing reports with respect to such securities contain specified asset-level information about each of the assets in the pool.

Increased transparency for these securitizations through the introduction of enhanced disclosure requirements and enhanced transactional safeguards for ABS shelf offerings should help to address the moral hazard problem that contributed to the poor performance of asset-backed securities during the financial crisis.[404] For registered offerings of asset-backed securities subject to the new requirements, the revisions to Regulation AB should improve the amount of information available to investors about the quality of securitized assets. The availability of detailed loan-level data in a machine readable format will provide investors with information needed to perform their own assessments of the associated risks and lessen the risk of overreliance on third-party evaluations such as credit ratings.

The new requirements for shelf offerings of asset-backed securities include additional safeguards to improve the offering process, encourage greater oversight of the structuring and disclosure of the transaction and provide additional recourse for resolving potential problems by providing stronger mechanisms to enforce compliance with the sponsors' representations and warranties.[405] Combined, these rules should improve investors' willingness to invest in asset-backed securities and to help the recovery in the asset-backed securities market with attendant positive effects on informational and allocative efficiency, competition, and the level of capital formation.

The amendments to Regulation AB should significantly reduce the moral hazard problem in the publicly offered asset-backed securities market and offer an important complement to, but not a substitute for, the risk retention requirement. In particular, there are several ways in which the risk retention requirement will further address the moral hazard problem. As an initial matter, the scope of the risk retention requirement is significantly broader than the asset-level disclosure requirements of the revised Regulation AB, which does not apply across all

[403] Asset-Backed Securities Disclosure and Registration; Final Rule, 79 FR 57184 (Sept. 24, 2014).

[404] *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).

[405] For example, the rules require a minimum three-business day waiting period before the first sale of securities in the offering to provide investors with time to conduct analysis of the offering. Additionally, as a shelf eligibility requirement, the chief executive officer of the depositor must provide a certification at the time of each takedown about the disclosure contained in the prospectus and the structure of the securitization. As another shelf eligibility requirement, the underlying transaction agreements must include provisions that require a review of pool assets upon the occurrence of a two-prong trigger based first upon the occurrence of a specified percentage of delinquencies in the pool and, if the delinquency trigger is met, upon the direction of investors by vote.

asset classes or to unregistered offerings (*e.g.,* private sales of securities to qualified institutional buyers pursuant to Rule 144A under the Securities Act).[406] Hence, the impact of the asset-level disclosure requirements under the revised Regulation AB may be limited by the extent to which market practices for asset classes not covered by the revised Regulation AB and privately offered asset-backed securities do not incorporate or develop similar disclosure standards and sponsors pursue private offerings instead of registered offerings.[407]

There is reason to believe, however, that the revised Regulation AB could have positive spillover effects into the private markets. With the adoption of standardized loan-level disclosures and increased investor confidence in the registered market, similar practices may develop in the private offering market, particularly to the extent that sponsors and investors participate in both markets. At present, 37 percent of the dollar volume of ABS transactions had sponsors who issued both registered and unregistered offerings.[408] With respect to asset classes and originators for which these sponsors have conducted registered offerings, the sponsors would have relatively low incremental costs to apply existing infrastructure developed to comply with the new disclosure requirements of Regulation AB in any private market offerings that they may conduct for those asset classes and those originators.

These benefits will be further supplemented with the overlay of the risk retention requirements. Risk retention forces sponsors to internalize the costs of inappropriate behaviors such as the obfuscation of the intrinsic risks of the securitization and failure to do appropriate diligence. This internalization will occur contemporaneously with the losses incurred by investors. In contrast, even with the additional disclosures and transactional safeguards required under the revised Regulation AB, sponsors may misrepresent the characteristics of the securitized assets and, in such cases, investor recourse to the sponsor can only occur after the fact of the losses, such as through legal remedy. Analysis from recent studies and details of Commission enforcement cases show that RMBS sponsors misrepresented the quality of the securitized asset pool in RMBS prospectuses leading up to the financial crisis.[409] The additional disclosure requirements and transactional safeguards mandated by Regulation AB may not cause sponsors of registered securitizations to internalize the costs of such practices as fully as if the sponsor retained a portion of the credit risk. Thus, the risk retention requirements for certain registered offerings should be beneficial even with the existence of Regulation AB's additional disclosure and transactional requirements because those disclosure requirements do not create the same alignment of interests of sponsors and investors that would serve to reduce the prevalence of moral hazard and improve underwriting in the publicly offered securitization market.

The disclosure practices that evolve in connection with revised Regulation AB will work together with the credit risk retention requirement to address the moral hazard problem in the publicly offered asset-backed securities market, encourage better underwriting, and better inform investors on the nature of the retained risk. In particular, revised Regulation AB may influence a sponsor's choice between the vertical and (potentially more costly) horizontal forms of risk retention. The revisions to Regulation AB require public disclosure of asset-level information for registered offerings, and because investors in these transactions will be able to better assess the characteristics of the securitized assets, they may be willing to invest in more risky tranches of securitizations, which could increase the ability of the sponsor to rely on a larger vertical interest. As a result, more sponsors might choose to use the less costly vertical risk retention option (or, if they use a combination of the horizontal and vertical forms of risk retention, they might choose to reduce the relative weight of the horizontal form and increase the relative weight of the vertical form), and if so, the implementation of the revisions to Regulation AB could reduce the costs of risk retention to sponsors of registered offerings.

After the implementation of both revised Regulation AB and the risk retention rules, asset-backed securities offerings will be subject to varying levels of compliance with asset-level requirements and the risk retention rules, which may result in differing levels of incentive alignment and transparency. Offerings would fall into different groups[410] and these groups may have different levels of exposure to underwriting quality, moral hazard and asymmetric information problems and may attract different types of investors because different risk tolerances among investors will result in preferences for different types of asset classes and offering methods. Some of these offering groups would be subject to higher underwriting standards and lower risk of default, but could be relatively more exposed to the moral hazard problem (*e.g.*, an incentive to misrepresent the characteristics of the securitized assets) due to the lack of risk retention and asset-level disclosures. Other offering groups may contain lower quality assets, but could be less exposed to the moral hazard problem because of the risk retention requirement. Such distinction could create different demand for each group commensurate with the level of perceived asset underwriting quality and moral hazard, with corresponding implications for risk premium and cost of capital.

3. Economic Baseline

The baseline the Commission uses to analyze the economic effects of the risk retention requirements mandated by

[406] Using the Asset-Backed Alert and Commercial Mortgage Alert databases, DERA staff calculated that, during the 2009–2013 period, only 12.8 percent of non-U.S. agency asset-backed securities deals (excluding ABCP and TOB), or 24.5 percent by dollar volume, will be subject to asset-level disclosure requirements under revised Regulation AB.

[407] The Commission continues to consider whether asset-level disclosure would be useful to investors across other asset classes as well as in private offerings. See revised Regulation AB Adopting Release, 79 FR at 57191 and 57197.

[408] AB Alert.

[409] For example, in 2013, the Commission charged Bank of America entities for failing to disclose key risks and misrepresenting facts about the mortgages underlying an RMBS securitization that the firms underwrote, sponsored, and issued in 2008 (see Commission press release of August 6, 2013, available at *http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539751924*). Similarly, in 2014, the Commission charged Morgan Stanley entities, with misleading investors and misrepresenting the current or historical delinquency status of mortgage loans underlying two subprime RMBS securitizations that the firms underwrote, sponsored, and issued in 2007 (see Commission press release of July 24, 2014, available at *http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542355594*). See also footnote 400 for academic papers that find evidence of mortgage misreporting in non-agency MBS by both originators and underwriters.

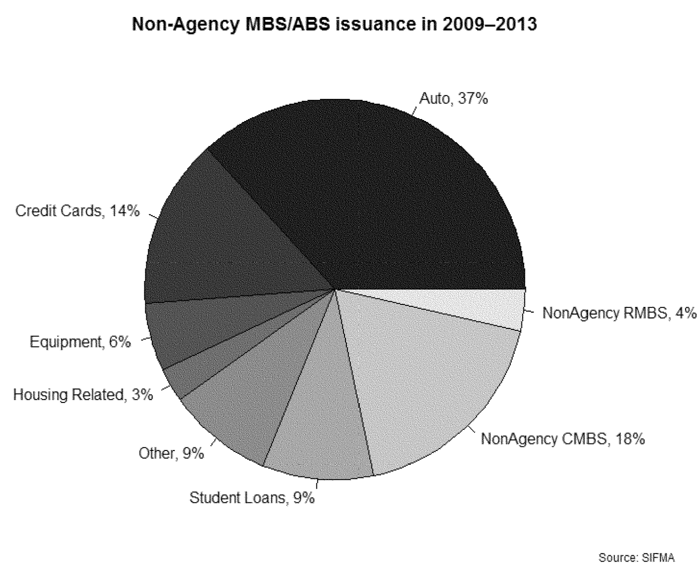
[410] The groups are: (1) Those where the sponsor is subject to risk retention and for which asset-level disclosure is required (*e.g.*, registered RMBS of loans that are not qualified residential mortgages (QRM), CMBS of loans that are not qualifying commercial real estate (QCRE) loans, and registered asset-backed securities backed by non-qualifying automobile loans); (2) those for which only asset-level disclosure is required (*e.g.*, registered RMBS of QRM loans, registered CMBS of QCRE loans, and registered asset-backed securities backed by qualifying automobile loans); (3) those for which only risk retention is required (*e.g.*, unregistered RMBS of non-QRM loans, unregistered CMBS of non-QCRE loans, unregistered asset-backed securities backed by non-qualifying automobile loans, and all unregistered asset-backed securities backed by any other assets not otherwise exempt from risk retention); and (4) those for which neither asset-level disclosure nor risk retention is required (*e.g.*, unregistered non-U.S. agency RMBS backed by QRM loans and U.S. agency RMBS).

Section 15G is the current set of rules, regulations, and market practices that may affect the amount of credit exposure retained by sponsors. To the extent not already encompassed by current market practices, the risk retention requirements being adopted are expected to have a significant impact on market practices of, and risks faced by, asset-backed securities market participants, including loan originators, sponsors and investors in asset-backed securities, and consumers and businesses that seek access to credit using financial products that are securitized. The costs and benefits of the risk retention requirements depend largely on the current market practices specific to each securitization asset class—including current risk retention practices—and corresponding asset characteristics. The magnitude of the potential effects of the risk retention requirements depend on the overall size of the securitization market and the extent to which the requirements affect borrower access to credit and the cost of capital for lenders. The discussion below describes the Commission's understanding of the securitization markets that are affected by the final rule.[411]

a. Size of Securitization Markets

The asset-backed securities market is important for the U.S. economy and comprises a large fraction of the U.S. debt market. During the five-year period from 2009 to 2013, 31.5 percent of the $33.2 trillion in public and private debt issued in the United States was in the form of mortgage-backed securities (MBS) or other asset-backed securities, and 3.0 percent was in the form of non-U.S. agency backed (private label) MBS or asset-backed securities. For comparison, 32.9 percent of all debt issued was U.S. Treasury debt, and 5.6 percent was municipal debt at the end of 2013.[412] Figure 1 shows the percentage breakdown of total non-agency issuances from 2009 to 2013 for various asset classes excluding short term asset-backed securities, such as asset-backed commercial paper (ABCP) or Tender Option Bonds (TOBs) and excluding collateralized loan and debt obligations (CLOs and CDOs).[413] Consumer credit categories, including asset-backed securities backed by automobile loans and leases and credit card receivables, comprise 37 percent and 14 percent of the total annual issuance volume, respectively. Non-agency RMBS and CMBS comprise 4 percent and 18 percent of the market, respectively, while asset-backed securities backed by student loans account for 9 percent of the market. Below the Commission analyzes the variation in issuance among these five largest asset classes. For several categories, the Commission outlines detailed information about issuance volume and the number of active sponsors (Tables 2 and 3).

FIGURE 1



Prior to the financial crisis of 2008, the number of non-agency RMBS issuances was substantial. For example, new issuances totaled $760.3 billion in 2005 and peaked at $801.7 billion in 2006. Non-agency RMBS issuances fell dramatically in 2008, to $34.5 billion, as did the total number of sponsors, from a high of 80 in 2006 to 27 in 2008. In 2013, there was only $25.2 billion in new non-agency RMBS issuances by 22 separate sponsors.

[411] The impact of the recently adopted but not yet effective revisions to Regulation AB is discussed in Section 2.c of this Economic Analysis.

[412] Source: SIFMA Statistics available at *http://www.sifma.org/research/statistics.aspx*, accessed on July 11, 2014.

[413] To estimate the size and composition of the private-label securitization market, the Commission uses data from the Securities Industry and Financial Markets Association (SIFMA) and Asset-Backed Alert. It is not clear how corporate debt repackagings are classified in these databases. In the following analysis, the Commission excludes all securities guaranteed by U.S. government agencies. ABCP is a short-term financing instrument and is frequently rolled over; thus, its issuance volume is not directly comparable to the issuance volume of other asset classes of asset-backed securities.

TABLE 2—ANNUAL ISSUANCE VOLUME AND NUMBER OF SPONSORS BY OFFERING TYPE FOR ASSET-BACKED SECURITIES BACKED BY CONSUMER LOANS

Year	Credit Card ABS				Automobile ABS				Student Loan ABS			
	SEC	144A	Private	Total	SEC	144A	Private	Total	SEC	144A	Private	Total
Panel A—Annual Issuance Volume by Offering Type ($ bn)												
2005	61.2	1.8	0.0	62.9	85.1	8.7	0.0	93.9	54.1	8.1	0.4	62.6
2006	60.0	12.5	0.0	72.5	68.0	12.2	0.0	80.2	54.9	10.9	0.5	66.2
2007	88.1	6.4	0.0	94.5	55.8	6.8	0.0	62.6	41.7	16.0	0.6	58.3
2008	56.7	5.0	0.0	61.6	31.9	5.7	0.0	37.6	25.8	2.4	0.0	28.2
2009	34.1	12.5	0.0	46.6	33.9	15.4	0.0	49.2	8.3	12.5	0.0	20.8
2010	5.3	2.1	0.0	7.5	37.9	15.3	0.0	53.2	2.8	16.2	1.2	20.2
2011	10.0	4.8	1.5	16.3	41.9	14.4	0.0	56.3	2.5	13.9	1.1	17.5
2012	28.7	10.5	0.0	39.2	65.6	13.9	0.0	79.5	6.6	23.2	0.0	29.9
2013	32.0	3.1	0.0	35.1	62.5	12.8	0.0	75.2	6.5	14.9	0.0	21.4
Panel B—Annual Number of Sponsors by Offering Type												
2005	13	5	0	17	30	9	0	38	13	7	1	19
2006	10	11	0	18	23	12	0	30	8	17	1	24
2007	12	8	0	16	23	9	0	28	7	17	1	22
2008	9	3	0	11	16	8	0	21	3	6	0	8
2009	9	6	0	11	13	13	0	22	3	6	0	6
2010	5	5	0	9	19	15	0	27	2	18	1	19
2011	5	7	1	12	14	16	0	25	1	19	1	20
2012	7	9	0	13	18	24	0	36	1	26	0	26
2013	9	5	0	14	17	19	0	32	1	22	0	22

Notes: The numbers in the table were calculated by staff from the Commission's Division of Economic and Risk Analysis (DERA) using the Asset-Backed Alert database. The deals are categorized by offering year, underlying asset type, and offering type (SEC registered offerings, Rule 144A offerings, or traditional private placements). Automobile asset-backed securities include asset-backed securities backed by automobile loans and leases, both prime and subprime, motorcycle loans, and truck loans. Panel A shows the total issuance amount in billions of dollars. Panel B shows the number of unique sponsors (based on sponsor name) of ABS in each category (the number in the column "Total" may not be the sum of the numbers in the columns "SEC", "144A" and "Private" because some sponsors may sponsor deals in several categories). Only asset-backed securities classified by Asset-Backed Alert as deals sold in the U.S. and sponsors of such deals are counted.

TABLE 3—ANNUAL ISSUANCE VOLUME AND NUMBER OF SPONSORS BY OFFERING TYPE FOR REAL ESTATE-BACKED ABS

Year	Non-agency RMBS				CMBS			
	SEC	144A	Private	Total	SEC	144A	Private	Total
Panel A—Annual Issuance Volume by Offering Type ($ bn)								
2005	738.5	21.7	0.0	760.3	136.23	34.44	0.00	170.68
2006	727.1	74.6	0.0	801.7	161.76	41.05	0.00	202.81
2007	634.8	80.4	0.0	715.3	190.57	40.58	0.00	231.15
2008	12.2	22.3	0.0	34.5	10.71	1.49	0.00	12.20
2009	0.0	48.1	0.0	48.1	0.00	6.86	0.00	6.86
2010	0.2	67.2	12.8	80.3	0.00	19.54	0.00	19.54
2011	0.7	40.8	9.7	51.3	8.45	26.05	0.00	34.50
2012	1.9	27.0	0.0	29.0	32.56	18.68	0.00	51.24
2013	4.0	21.1	0.0	25.2	53.07	33.27	0.00	86.35
Panel B—Annual Number of Sponsors by Offering Type								
2005	54	21	0	60	41	42	0	61
2006	55	43	0	80	39	40	0	57
2007	53	45	0	78	43	29	0	54
2008	12	22	0	27	19	2	0	21
2009	0	17	0	17	0	13	0	13
2010	1	26	1	28	0	25	0	25
2011	1	16	2	18	16	31	0	31
2012	1	20	0	21	26	33	0	56
2013	1	22	0	22	32	57	0	83

Notes: The numbers in the table were calculated by DERA staff using the Asset-Backed Alert and Commercial Mortgage Alert databases. The deals are categorized by offering year, underlying asset type, and offering type (SEC registered offerings, Rule 144A offerings, or traditional private placement). Non-agency RMBS include residential, Alt-A, and subprime RMBS. Panel A shows the total issuance amount in billions of dollars. Panel B shows the number of unique sponsors (based on sponsor name) of asset-backed securities in each category (the number in the column "Total" may not be the sum of the numbers in the columns "SEC", "144A" and "Private" because some sponsors may sponsor deals in several categories). Only asset-backed securities deals classified by Asset-Backed Alert as sold in the U.S. and sponsors of such deals are counted.

Similar to the market for non-agency RMBS, the market for CMBS also experienced a decline following the financial crisis. There were $231.15 billion in new issuances at the market's peak in 2007. New issuances fell to $12.20 billion in 2008 and to $6.86 billion in 2009. In 2013, there were $86.35 billion in new CMBS issuances.

While the markets for asset-backed securities backed by credit card receivables, automobile loans and leases, and student loans experienced a similar decline in issuances following the financial crisis, the issuance trends in Table 2 indicate that they have rebounded substantially more than the non-agency RMBS and CMBS markets. Asset-backed securities collateralized by automobile loans and leases currently have the largest issuance volume and the largest number of active sponsors of asset-backed securities among all asset classes. There were $75.2 billion in new asset-backed securities issuances collateralized by automobile loans and leases in 2013 from 32 sponsors. This amount of new issuances is approximately twice the amount of new issuances in 2008 ($37.6 billion) in this asset class and is similar to the amount of new issuances in this asset class from 2004 to 2007.

Although the amount of new issuances of asset-backed securities backed by credit card receivables has not fully rebounded from pre-crisis levels, it is currently substantially larger than in recent years. There were $35.6 billion in new issuances of asset-backed securities backed by credit card receivables in 2013, a five-fold increase over the amount of new issuances in 2010 ($7.5 billion). The number of sponsors of such transactions has remained steady over time, totaling 14 in 2013. The amount of new issuances of asset-backed securities backed by student loans has also not fully rebounded from pre-crisis levels.[414] There were $21.3 billion in new issuances of asset-backed securities backed by student loans in 2013, compared to a range from $45.9 billion to $58.3 billion between 2004 and 2007. The number of sponsors of such transactions has returned to pre-crisis levels, totaling 22 in 2013.

In addition to these asset classes, sponsors will have to retain risk for all issuances of asset-backed securities, including equipment loans and leases, corporate debt repackagings, TOBs, ABCP, CDOs and CLOs.

Information describing the amount of issuances and the number of sponsors in the ABCP markets is not readily available. Information on the total amount of issuances outstanding indicates that the ABCP market has decreased since the end of 2006, when the total amount outstanding was $1,081.4 billion, or 55 percent of the entire commercial paper market.[415] As of the end of 2013, there were $254.7 billion of ABCP outstanding, accounting for less than 25 percent of the commercial paper market.

TABLE 4—COMMERCIAL PAPER (CP) OUTSTANDING ($BN)

Year	ABCP	All CP outstanding	ABCP share (%)
2004	688.9	1,401.5	49.2
2005	860.3	1,637.5	52.5
2006	1,081.4	1,974.7	54.8
2007	774.5	1,785.9	43.4
2008	734.0	1,681.5	43.7
2009	487.0	1,170.0	41.6
2010	348.1	971.5	35.8
2011	328.8	959.3	34.3
2012	319.0	1,065.6	29.9
2013	254.7	1,086.2	23.4

NOTES: Source—Federal Reserve.

Like other asset-backed securities markets, the CLO market went through the same cycle of high growth right before the crisis in 2005–2007 followed by steep decline in 2008–2010. However, by 2013 the CLO market had almost recovered to its pre-crisis level (see Table 5), in terms of the number of CLO deals per year, the aggregate dollar volume of issuance, and the number of active sponsors (CLO managers). It should also be noted that, in most of the years in the table below, the median sponsor had only one CLO deal sponsored per year.

TABLE 5—ANNUAL ISSUANCE VOLUME AND NUMBER OF SPONSORS FOR ARBITRAGE CLOS [416]

Year	Deals	Total volume, $ bn	Unique CLO managers
2004	89	30.6	60
2005	124	56.05	79
2006	215	106.74	119
2007	187	95.56	101
2008	44	22.05	26
2009	8	2.84	6
2010	7	2.39	6
2011	30	12.86	26
2012	123	55.99	72

[414] The elimination of the Federal Family Education Loan Program (FFELP), a federally guaranteed student loan program, in March 2010 may be a significant contributor to the decline in the issuance of asset-backed securities backed by student loans as no subsequent loans were permitted to be made under the program after June 2010.

[415] Based on information from the Federal Reserve Bank of St. Louis FRED Economic Data database.

TABLE 5—ANNUAL ISSUANCE VOLUME AND NUMBER OF SPONSORS FOR ARBITRAGE CLOs [416]—Continued

Year	Deals	Total volume, $ bn	Unique CLO managers
2013	179	85.83	97

NOTES: The numbers in the table were calculated by DERA staff using the Asset-Backed Alert database. Only arbitrage CLOs backed by corporate loans and sold in the U.S. and sponsors of such deals are counted. The total issuance amount is in billions of dollars.

b. Current Risk Retention Market Practices

As noted earlier, the potential economic effects of the final risk retention requirements will depend on current market practices. Currently, risk retention is not legally mandated in any sector of the U.S. asset-backed securities market (with the exception of the FDIC safe harbor option discussed below where risk retention is one of the compliance options), although some sponsors of different asset-backed securities classes do remain exposed to credit risk, at least at initial issuance, in response to investors' or rating agencies' demand. The new risk retention requirements will impose a cost on sponsors that will depend on the amount and form of risk currently retained by a sponsor of asset-backed securities and the length of time sponsors remain exposed to such risk. Market practices are different for different sectors (to the extent that they are applied at all) and there is no uniform reporting of the types or amounts of risk exposure. Because of the lack of aggregated quantitative information relating to the current risk exposure practices of sponsors, the Commission does not have full information on the extent to which sponsors remain exposed to risk. Below the Commission describes current risk exposure practices for various asset classes based upon its understanding of these markets and public comment received to date.[417] Almost all asset classes include structural features in which sponsors remain exposed to some amount of credit risk, including RMBS, CMBS, automobile loans and leases, credit card receivables, equipment loans and leases and automobile floorplan loans. We note, however, that even if some sponsors voluntarily retain risk in the form of a combination of several tranches, including residual interest that adds up to 5 percent of the principal amount of the deal, the sponsors typically do not contractually commit in the transaction documents to holding these interests after the initial sale (however, a rating agency might downgrade the entire securitization if the residual is sold). Notable exceptions include: TOBs, CLOs and CMBS where depending on the specific structure and the funding needs of the sponsor, either the sponsor or a third party might purchase a residual or equity interest; and structures in which parties involved in the securitization, other than the sponsors, retain risk, such as ABCP conduits, in which the seller of receivables holds a pro rata or residual interest in the receivables sold to the ABCP conduit.

In 2010, the Federal Deposit Insurance Corporation (FDIC) adopted an amended rule regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization.[418] If the FDIC does not deem a transfer of assets to a securitization vehicle a true sale, the FDIC could repudiate transaction agreements for the securitization, recover financial assets that had been transferred, and thereby compromise the ''legal isolation,'' as determined by relevant accounting standards, of the assets upon which the securitization was predicated.[419] The FDIC's rule imposes several new conditions to qualify for a safe harbor from such repudiation, with risk retention being one of the new conditions. Thus, in the absence of other forms of ''true sale'' protection, banking institutions that would like to avoid the potential future FDIC repudiation of a securitization could retain credit risk. As discussed below in Section 3.b.iii, some banks sponsoring asset-backed securities comply with the FDIC safe harbor rule by retaining risk in the form of a representative sample of the securitized assets—one of the forms of risk retention permitted under the FDIC's rule.

Finally, sponsors that intend to market their asset-backed securities in both the United States and the European Union and that issue securities after January 1, 2014, may need to retain 5 percent credit risk to comply with E.U. risk retention rules that, instead of imposing a direct risk retention obligation on sponsors, regulate the types of securities that certain investors can buy.[420] The Commission does not have data on the fraction or types of asset-backed securities currently sold in the U.S. that retain credit risk to comply with these rules or asset-backed securities sold by U.S. sponsors to investors covered by E.U. risk retention rules.

i. Residential Mortgage-Backed Securities

The Commission understands that sponsors of non-agency RMBS historically did not generally retain a portion of credit risk in the form and at a level consistent with the rule being adopted. One study [421] finds that, on

[416] The agencies are adopting a risk retention option for CLOs that meet certain criteria, described herein as ''open-market CLOs.'' Arbitrage CLOs have many of the features of open-market CLOs, but as these requirements were not part of the market prior to this rulemaking, there is no reasonable means of determining which CLOs would have qualified as an open-market CLO.

[417] See also the Board of Governors of the Federal Reserve System's ''Report to the Congress on Risk Retention'' (October 2010), pp. 41–48, where other mechanisms intended to align incentives and mitigate risk are described, including alternatives such as overcollateralization, subordination, guarantees, representations and warranties, and conditional cash flows as well as the retention of credit risk. The report also contains a description of the most common incentive alignment and credit enhancement mechanisms used in the various securitization asset classes. The report does not establish the extent to which these alternatives might be substitutes for the retention of credit risk.

[418] *See* 12 CFR 360.6. Upon their effective date, the final rule will replace the FDIC regulations and shall exclusively govern the requirement to retain credit risk for insured depository institutions.

[419] The FDIC would have to pay damages to the securitization vehicle for any repossessed assets; however, those damages might be less than the full amount of principal and interest due on outstanding securities backed by such assets.

[420] Article 122a of the Capital Requirements Directive mandates that European Economic Area-regulated credit institutions and investment firms and their affiliates may only invest in securitization transactions if the original lender, originator or sponsor of the securitization retains 5 percent of the net economic interest of the transaction. Related EU Alternative Investment Fund Manager's Directive imposes similar risk retention requirements on securitizations that most private equity, real estate investment services and hedge funds are allowed to invest in.

[421] Taylor Begley and Amiyatosh Purnanandam, Design of Financial Securities: Empirical Evidence from Private-label RMBS Deals (2014), University of Michigan working paper. They find that the size of the residual interest is proportional to the fraction of no document loans—their proxy for increased information asymmetry between sponsors and investors.

average, RMBS deals had a 1.2 percent residual interest by face value that was proportional to the perceived level of information asymmetry between the sponsor and ABS investors, although the study could not determine whether sponsors retained the residual interest or, if retained, for how long it was held after issuance. Thus, even if sponsors of RMBS deals were holding the residual interest and were not selling it to third parties, they were not, on average, retaining 5 percent of the credit risk by face value.[422] Consequently, as discussed below, except in the case where exemptions are applicable (*e.g.,* the QRM exemption), the final risk retention requirements likely will impose new constraints on RMBS sponsors.

ii. Commercial Mortgage-Backed Securities

The current risk retention practice in the CMBS market is to retain at issuance the ''first loss piece'' (riskiest tranche). This tranche is typically sold to a specialized category of CMBS investor, known as a ''B-piece buyer.''[423] The B-piece investors in CMBS securitizations often hold dual roles as bond investors, if the assets remain current on their obligations, and as holders of controlling interests to appoint special servicers, if the loans default and go into special servicing. As holders of the controlling interest, they will typically appoint an affiliate as the special servicer. The B-piece CMBS investors are typically commercial real estate specialists who use their knowledge about the securitized assets in the pools to conduct extensive due diligence on new deals.[424] The B-piece market has very few participants.[425] The B-pieces are often ''buy-and-hold'' investments, and, based on the Commission's knowledge of the asset-backed securities market, the secondary market for B-pieces is relatively illiquid at this time. According to one comment letter, a typical B-piece makes up 2.6 percent of economic and 7 percent of the notional balance of a CMBS. Thus, the Commission believes the prevailing market practice for risk retention in the CMBS sector is to hold less than the final rule's risk retention option for CMBS sponsors.

iii. Master Trusts (Revolving Pool Securitizations)

Master trusts generally issue multiple series of asset-backed securities over time, backed by a common pool of securitized assets. The transaction agreements require the sponsor to maintain the principal balance of the securitized assets at an amount that is at all times sufficient to back the aggregate amount of asset-backed securities outstanding to investors with a specified amount of collateral above that amount. The principal amount of outstanding investor ABS interests changes over time as new series are issued or existing series are paid off. Moreover, as each series is issued, it begins with a revolving period (typically for some number of years), during which the investors receive only interest, and cash from borrower principal repayments on the pool assets are used to buy additional assets for the pool from the sponsor. This provides the sponsor with ongoing funding for its operations, and maintains the level of pool assets over time. Then, at a date specified under the terms of the series, the revolving phase for the series comes to an end, and cash from borrower principal repayments on pool assets is used to repay investors and retire that series of investor ABS interests.

Sponsors of revolving master trusts often maintain risk exposures through the use of a seller's interest which is intended to be equivalent to the sponsor's interest in the receivables underlying the asset-backed securities. In current market practices, the amount and form of risk exposure generally depends on the asset class in the master trust; there is typically more risk exposure for assets with higher rates of default or that are more difficult to assess. For example, credit card master trusts sponsors retain economic exposure through excess spread and fees, while dealer floorplan asset-backed securities have significant residual exposure. The Commission requested additional information about current practices and data from market participants, but none was provided. As a result, the Commission does not have reasonably accessible data about revolving master trusts that would permit it to estimate current market practice about the amount of risk exposure held by sponsors.

As discussed above, banks sponsoring asset-backed securities that intend to comply with the FDIC safe harbor rule could retain 5 percent of credit risk of the securitized pool. Some banks that use trust structures to sponsor asset-backed securities backed by automobile loans and leases use one of the allowed options under the FDIC rule, the representative sample option, to comply with the safe harbor rule requirements. Under this option, the sponsor randomly selects a separate pool of receivables that represents the characteristics of the securitized pool of assets and holds it on their balance sheet.[426]

iv. Other Asset-Backed Securities

The current market practices for other categories of asset-backed securities that serve to align the interests of the sponsor and investors vary across asset classes. The Commission understands that sponsors of automobile loans typically maintain exposure to the quality of their underwriting by retaining a significant residual interest in their securitization transactions. However, there is insufficient data available to the Commission to estimate the fair value of these retained residual interests. Also, as discussed above, some banking institutions that are affiliated with a sponsor of asset-backed securities collateralized by automobile loans and leases retain a 5 percent representative sample to comply with the FDIC safe harbor rule. As noted above, the final rule does not include a representative sample option. The Commission also understands that many sponsors of asset-backed securities backed by student loans did not retain credit risk as many were federally guaranteed. Sallie Mae, the largest sponsor of student loan asset-backed securities, typically retains through an affiliate a residual interest in the form of overcollateralization in the securitizations that it sponsors.

v. Asset-Backed Commercial Paper

ABCP is a type of asset-backed security that is typically issued to investors by a special purpose vehicle (commonly referred to as a ''conduit'')

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[422] We also note that one of the largest sponsors of registered RMBS has stated it currently retains some interest in the RMBS transactions that it sponsors. See Sequoia Mortgage Trust 2013–1, Final Prospectus filed pursuant to Rule 424(b)(5), File No. 333–179292–06 filed January 16, 2013; *http://www.sec.gov/Archives/edgar/data/1176320/000114420413002646/v332142_424b5.htm.*

[423] However, not every CMBS deal has a B-piece buyer. According to Commercial Mortgage Alert, 46 percent of CMBS deals in 2009–2013 had a B-piece buyer.

[424] CMBS have much smaller number of underlying loans in a pool (based on data from Commercial Mortgage Alert, in 2009–2013, CMBS, on average, had about 100 commercial properties in a pool, whereas RMBS had about 3,000 assets in a pool and automobile loan/lease ABS typically had 75,000 assets) and these loans are often not standardized. Thus, direct management of individual underperforming loans is often necessary and is much more viable for CMBS than for other asset classes.

[425] Based on Commercial Mortgage Alert data, in 2009–2013, there were 38 different B-piece buyers with 9 of them participating in 70 percent of CMBS deals.

[426] See, for example, Bank of America Auto Trust 2012–1 (*http://www.sec.gov/Archives/edgar/data/1488082/000119312512149853/d309744d424b3.htm*) or Ally Auto Receivables Trust 2012–3 (*http://www.sec.gov/Archives/edgar/data/1477336/000119312512243201/d357186d424b5.htm*).

sponsored by a financial institution. The commercial paper issued by the conduit is collateralized by a pool of asset-backed securities, which may change over the life of the entity. ABCP conduits generally purchase longer-term assets financed by the issuance of shorter-term liabilities, and the liabilities are ''rolled,'' or refinanced, at regular intervals.[427]

In a typical ABCP conduit transaction, the sponsor's customer (an ''originator-seller'') sells loans or receivables to an intermediate, bankruptcy remote special purpose vehicle (SPV). The credit risk of the receivables transferred to the intermediate SPV then typically is separated into two classes—a senior ABS interest that is acquired by the ABCP conduit and a residual interest that absorbs first losses on the receivables and that is retained by the originator-seller. The residual interest retained by the originator-seller typically is sized with the intention that it be sufficiently large to absorb all losses on the underlying receivables.

In this structure, the ABCP conduit issues short-term ABCP that is collateralized by the senior ABS interests purchased from one or more intermediate SPVs, which are, in turn, supported by the subordination provided by the residual ABS interests retained by the originator-sellers (*i.e.,* the sponsors of underlying ABS interests would be subject to risk retention requirements). The sponsor of this type of ABCP conduit, which is usually a bank or other regulated financial institution or their affiliate, also typically provides (or arranges for another regulated financial institution or group of financial institution to provide) 100 percent liquidity coverage on the ABCP issued by the conduit. This liquidity coverage typically requires the support provider to provide funding to, or purchase assets or ABCP from, the ABCP conduit in the event that the conduit lacks the funds necessary to repay maturing ABCP issued by the conduit.

Commenting on the original proposal, ABCP conduit sponsors noted that there are structural features in ABCP securitizations that align the interests of the ABCP conduit sponsor and the ABCP investors. For instance, commenters stated that ABCP conduits usually have some mix of credit support and liquidity support equal to 100 percent of the ABCP outstanding. In the view of commenters, this liquidity and credit support exposes the ABCP conduit sponsor to the quality of the assets in an amount that far exceeds 5 percent of the fair value of the outstanding ABCP.[428]

vi. Collateralized Loan Obligations

A collateralized loan obligation (CLO) is an asset-backed security that is typically collateralized by portions of tranches of senior, secured commercial loans or similar obligations of non-investment grade borrowers.[429] CLOs are organized and initiated by a CLO manager, usually when the CLO manager partners with a structuring bank that assists in financing asset purchases that occur before the formation of the CLO.[430] The CLO manager actively manages the asset portfolio and earns management fees and performance fees for investment management services provided to the CLO.

The Commission understands that CLO managers often retain a small portion—significantly less than 5 percent—of the residual interest, although the party retaining the risk may vary depending on the CLO. Some types of CLO managers are more likely to hold a significant residual interest in their CLO, while others are more likely to secure a third-party equity investor to purchase the residual interest. According to one commenter, a common CLO market practice is for the CLO manager to hold 5 percent of the residual interest, which is typically around 8 percent of the value of the CLO at issuance.[431] This level of retention equates to approximately 0.4 percent of the value of the CLO.

The Commission understands that many CLO structures use overcollateralization—the amount by which the face value of the underlying loan portfolio[432] exceeds the face value of the outstanding asset-backed securities—which many CLO managers consider as a form of risk retention because the value of the overcollateralization is ascribed to the residual interest. For example, the current senior overcollateralization for older vintage CLO 1.0 deals (CLO structure used before the crisis) is 132 percent, while for CLO 2.0 deals (the structure used for newer CLO) it is 135 percent.[433] This means that a CLO 1.0 deal has $132 supporting every $100 of the most senior tranche outstanding. The amount of overcollateralization for the entire CLO structure would be much lower because it would also include mezzanine and subordinate bonds in addition to the residual interest. The agencies do not consider overcollateralization by face value to be an acceptable form of risk retention because the face values of both the securitized assets and of the ABS interests can materially differ from their relative value and/or cost to the sponsor.[434]

The Commission requested comments on whether any practices in the CLO market reflected risk retention as envisioned by the proposed rule. Many commenters indicated that the proposed rule requirements would change current practices and therefore substantially impact the CLO market. No commenter indicated the presence of, or development towards, risk retention practices that would satisfy the requirements of the proposed rule. Some commenters described the amount of risk retention currently held and how managers of CLOs often retain a small portion of the residual interest and asserted that sponsors retain risk through subordinated management and performance fees that have performance components that depend on the performance of the overall pool or junior tranches.[435]

vii. Tender Option Bonds

There are two typical tender option bonds (TOBs) structures that generally have different amounts of risk retention. One type of TOB is a bank-sponsored TOB where a single bank and its affiliates serve as the sponsor, residual holder and liquidity provider; in this structure, the bank will typically hold nominal equity. Commenters noted that the bank's credit exposure is significantly greater than 5 percent because it is the provider of 100 percent

[427] *See* Original Proposal at § __.9.

[428] *See* footnote 395 for the general agencies position on acceptability of unfunded arrangements as forms of risk retention.

[429] The term ''CLO'' is also used to refer to the special purpose vehicle that issues the asset-backed securities and the overall securitization structure.

[430] *Report to the Congress on Risk Retention,* Board of Governors of the Federal Reserve System, at 22 (Oct. 2010), *available at http://federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.pdf.*

[431] In general, the size of the equity tranche increases in downturns and decreases in booms. See Updating the CLO Primer, Bank of America/Merrill Lynch, July 2012.

[432] The face value of the underlying loans may be adjusted in accordance with the CLOs transaction documents to reflect concentration limits, delinquencies and/or discounted purchase prices.

[433] Asset-Backed Alert, July 11th, 2014.

[434] As discussed below, the final rule does give sponsors credit for overcollateralization to the extent the fair value of the horizontal form of risk retention takes into consideration the fair value of the overcollateralization.

[435] The agencies have not recognized subordinated management fees as an acceptable form of risk retention in the final rule because, if the CLO underperforms, subordinate management fees may not align the interests of the manager with those of investors. See also footnote 395 for the general agencies position on acceptability of unfunded arrangements as forms of risk retention.

liquidity support. The second type of TOB is one in which the bank that is the liquidity provider does not hold the residual interest; in this case the TOB residual holder will retain a more significant amount of risk. Other features of TOBs include a put feature as part of the bond that allows investors to put the bond back to the sponsor and a 100 percent liquidity support. The Commission requested data on current market levels of risk retention for TOBs but received no data from commenters.

4. Analysis of Risk Retention Requirements

As discussed above, the agencies are adopting the rule requiring sponsors of asset-backed securitizations to retain risk. Each of the asset classes subject to the final rule has its own particular structure and, as a result, the implementation and impact of risk retention will vary across asset classes, although certain attributes of risk retention are common to all asset classes. In this section, the Commission discusses those aspects of the final rule that apply across a broad range of asset classes: The requirement that sponsors hold 5 percent of the credit risk of a securitization; the use of fair value of the securitization to measure the amount of horizontal risk retained by the sponsor; and the length of time that a sponsor will be required to hold its risk exposure.

a. Level and Measurement of Risk Retention

i. Requirement To Hold Five Percent of Risk

Section 15G requires the agencies to jointly prescribe regulations that require a sponsor to retain not less than 5 percent of the credit risk of any asset that the sponsor, through the issuance of ABS, transfers, sells, or conveys to a third party, unless an exemption from the risk retention requirements for the securities or transaction is otherwise available. The agencies reproposed a requirement to hold a minimum 5 percent base risk retention for most ABS transactions that are within the scope of Section 15G, with some exemptions.

Commenters did not comment specifically on the discussion of the 5 percent risk retention requirement in the Commission's Economic Analysis in the 2013 reproposal. One commenter did suggest the minimum amount of risk retention be increased to 20 percent. As discussed in more detail below, increasing the minimum amount of risk retention could increase the cost to sponsors and impede capital formation in the economy by preventing the more efficient reinvestment of the sponsors' capital, while not necessarily providing significant incremental benefit to investors. In addition, several commenters suggested risk retention requirements be determined by reference to asset quality.[436]

The agencies are adopting a 5 percent risk retention requirement as reproposed. The Commission lacks the data—and commenters did not provide quantitative information—to allow for analysis of an optimal level of retained risk, taking into account the goal of aligning the incentives of the sponsors and the investors in asset-backed securities. As discussed above, barring any exemption, the required level of risk retention is set by statute at no less than 5 percent. Below is a discussion of the trade-offs between setting the level of required risk retention too high or too low.

As a general matter, if the required level of risk retention is set too low, it may not adequately align the incentives of investors and sponsors. While we recognize that Congress prescribed a minimum level of risk retention, the Commission is also aware that, as discussed in the Economic Baseline, sponsors of asset-backed securities in many asset classes retained less than 5 percent credit exposure to securitizations in the past. Moral hazard problems persisted at these lower levels. In contrast, asset classes with relatively higher levels of risk retention (*e.g.,* asset-backed securities backed by auto loans and leases) performed relatively better throughout the financial crisis.

A level of risk retention that is set too high, however, could lead to inefficient deployment of capital by unduly restricting a sponsor's ability to structure new deals. If sponsors are limited in their ability to secure the necessary financing to retain the required amount of credit risk in their intended offerings, then this could adversely impact the flow of capital from ABS investors to originators of the assets intended for securitization. Hence, excessive required risk retention levels may lead to less capital available to lenders, potentially increasing borrowing rates as borrowers compete for a more limited supply of credit. In this scenario, the reduction in capital formation would have a negative impact on competition due to the increased cost of securitizing non-qualified assets, disadvantaging their ability to be financed by ABS investors relative to qualified assets and other sources of capital.

ii. Measurement of Risk Retention Using Fair Value

The agencies are adopting a requirement for sponsors to measure risk retention of an ''eligible horizontal residual interest'' (EHRI) using a fair value measurement framework consistent with GAAP. As described in the 2013 reproposal, the agencies believe that measuring risk retention with a fair value measurement framework will align the measurement more closely with the credit risk of a securitization transaction than alternative frameworks. The agencies are not requiring vertical interests to be measured using a fair value measurement framework, as proposed, because they were persuaded by commenters that such measurement is not necessary to ensure that the sponsor has retained 5 percent of the credit risk of the ABS interests issued.

Commenters generally supported basing the measurement of the horizontal risk retention requirement on fair value. Some commenters raised general concerns with the proposed method by which sponsors would be required to measure their risk retention because some sponsors do not currently use fair value calculations. Thus, requiring such sponsors to measure their risk retention with fair value would create significant burden and expense. Commenters also expressed several specific accounting concerns regarding use of fair value to measure risk retention. Specifically, they expressed concern regarding the timing of the pre-sale fair value disclosure requirement. Commenters noted that the most objective and accurate way to calculate the fair value of the residual interest is to base the valuation on observable market prices for the remaining securities; however, because the reproposal required that sponsors

[436] The agencies do not believe that it is necessary or appropriate to attempt to vary the amount of risk retention based on the quality of the assets or other, similar, factors. Doing so would unnecessarily complicate compliance with the rule. Furthermore, as discussed in the following section, the Commission believes that requiring risk retention to be measured by fair value adequately incorporates the quality of the assets. Specifically, it would calibrate the sponsor's economic exposure to the asset pool depending on quality of securitized assets. For example, the Commission notes that if the securitized asset pool consists of low-quality assets, the value of the residual interest would be relatively low and a sponsor would have to hold a larger equity tranche to meet the five percent fair value credit risk exposure requirement. On the other hand, if the securitized asset pool consists of high quality assets, the value of the residual interest would be relatively higher and a sponsor would be able to satisfy the requirement by holding smaller residual interest. Use of face value or overcollateralization to avoid the 5 percent risk retention requirement will not be possible using fair value methodologies acceptable under GAAP as it would account for the expected losses associated with the residual interest.

calculate the fair value of the residual interest in advance of the final pricing of the issued securities, the fair value of the residual interest would have to be calculated using estimates of final pricing levels. Commenters asserted that potential differences between the pre-sale fair value calculated using estimated pricing levels and the post-closing fair value calculated using actual pricing levels would confuse investors.

To provide investors with sufficient information to allow them to evaluate whether the sponsor's estimated calculation of fair value was reasonable, the proposed rule would have required sponsors to disclose the key inputs and assumptions used in measuring fair value and the sponsor's technique(s) used to derive the key inputs and assumptions. Many commenters expressed concerns about the proposed requirement, indicating that the proposal would require sponsors to disclose information that is proprietary, highly confidential and commercially sensitive, which could be used by third parties to the competitive disadvantage of the sponsor. Other commenters suggested significant modifications to the disclosure requirements. For example, several commenters asserted that sponsors should only be required to make disclosures to the Commission and banking agencies, rather than to investors. Significant concern was raised regarding potential liability and litigation that commenters indicated may result when fair value projections, assumptions and calculations disclosed to investors turn out to be incorrect.

A few commenters asserted that for simple structures, sponsors should not be required to make fair value determinations or related disclosures, nor should the cash flow restriction (as described below) apply. Several commenters requested that the final rule should not require sponsors to measure and disclose the fair value of eligible vertical interests, so long as the underlying ABS interests have either a principal or notional balance. The commenters noted that a 5 percent interest in the cash flow of each class would always be equivalent to 5 percent of the fair value of each class. In this regard, the commenters asserted that requiring fair value measurement and disclosures for the vertical option would be unnecessary for ensuring compliance with the rule.

The final rule does not require sponsors holding risk retention in a vertical form to measure and disclose the fair value of their vertical risk retention. With the vertical form of risk retention, requiring sponsors to measure and disclose the fair value would impose additional cost on the sponsor with little, if any, corresponding enhancement of investors' ability to evaluate and understand the amount of credit risk exposure of the sponsor. This is because 5 percent of the fair value of each tranche will be equal to 5 percent of face value of each tranche. Therefore, if investors know that a sponsor is holding 5 percent of each tranche, they will be able to assess the credit exposure of the sponsor regardless of whether it is face value or fair value.

Using a fair value measurement framework acceptable under GAAP, as applicable, to value the EHRI will provide a number of benefits. First, it allows investors and sponsors to objectively measure and understand the amount of credit risk exposure of the sponsor. The use of fair value is intended to prevent sponsors from structuring around risk retention, as may otherwise be the case when using the face value of residual interests or overcollateralization to measure the amount of horizontal risk retention. For example, if a sponsor issues $100 million in asset-backed securities at par and retains a first-loss residual interest with a face value of $5 million, that residual interest could yield a market value below $5 million given the expected losses associated with the securitized assets, in which case the sponsor would be holding less than 5 percent of the deal's value. Use of face value or overcollateralization to avoid the 5 percent risk retention requirement will not be possible using fair value methodologies acceptable under GAAP as it would account for the expected losses associated with the residual interest. Moreover, and as a general matter, most investors and sponsors have experience with fair value methodologies acceptable under GAAP and therefore using it in this context will help to minimize the costs of evaluating the amount of risk retention held by sponsors because it will be consistent with other valuation experiences.

There are also potential costs to investors associated with the use of a fair value measurement framework. Fair value is a measurement framework that, for certain types of instruments, where significant unobservable inputs are used to determine fair value, requires an extensive use of judgment. Because of this extensive use of judgment, an investor may be unable to determine if the sponsor's fair value calculation uses assumptions that are similar to the investor's assumptions. In order to help mitigate this potential cost, the agencies also are requiring, as proposed, that the sponsor disclose specified information about how it calculates fair value. While this requirement should discourage manipulation, sponsors will incur additional costs to prepare the necessary disclosures. In addition, because the final rule specifies that fair value must be determined using a fair value measurement framework consistent with GAAP, sponsors will incur costs to ensure that the reported valuations are compliant with the valuation standard.

With respect to the disclosure required in order to allow investors to evaluate and understand the sponsor's fair value calculation, the reproposal discussed the appropriate level of detail to be provided to investors. One approach would be to provide the same model inputs (*e.g.,* prepayment rate, discount rates) that the sponsors used so that investors could more precisely evaluate the sponsor's fair value calculations. While sponsors already have the model inputs they use to calculate fair value, as commenters noted, there may be costs to the sponsors associated with providing investors with sponsors' proprietary information. For example, sponsors may base their model inputs on proprietary information derived from the historical performance data of their loan pools, information that has commercial value and is often compiled and sold to market participants who purchase the data in order to derive model inputs similar to the ones that sponsors would be required to disclose. Disclosure of the model inputs could thus lower the commercial value of the historical data. Disclosing their inputs could also provide competitors—with similar access to historical performance data—with insight into the sponsor's interpretation or selection of relevant benchmark data. Access to this insight could reveal proprietary valuation methods or, as some commenters suggested, give rise to litigation risk to the extent that there are differences in opinions on how to interpret the data. Taken together, requiring sponsors to disclose precise information about their model inputs could increase the cost to sponsors without necessarily providing additional benefit to investors.

To help mitigate these potential costs, the final rule permits the disclosure of fair value based on estimated ranges for tranche size, interest rates for each tranche, and underwriting discount. The information is required to be provided a reasonable amount of time prior to the sale of the asset-backed security. Also required to be included are the sponsor's key inputs and assumptions that may be described as a curve. The rule requires that this disclosure be updated to reflect actual fair values of the ABS interests sold at the closing date. This approach may enable investors to make meaningful assessments of whether a sponsor's fair value calculations are reasonable prior to making their investment decisions, and at the same time may help to address sponsors' concerns about disclosing what they believe to be proprietary information and the timing of the disclosure. The ranges of pricing information will allow investors to decide if the sponsor's model input curves are aggressive or conservative compared to their own expectations based on their experiences and knowledge of the asset class.

In the case of revolving pool securitizations, the agencies are permitting the seller's interest option to be measured using face value. These securitizations have unique structures described further below that would address the agencies' concerns about the use of face value of the ABS interests or the face value of the securitized assets to circumvent risk retention requirements as described above. This option recognizes the unique characteristics of certain structures and the impact of those structures on the alignment of incentives for the transaction parties. This option also helps to minimize the burden of fair value disclosure discussed in the reproposal while still allowing certain structures to have a meaningful amount of risk retained and addressing some commenters' concerns about using a fair value measurement framework to measure risk retention. One unique characteristic is that the vehicle will engage in multiple issuances for the life of the master trust. Because of this, if the revolving pool securitization contains poorly underwritten receivables that are expected to default then, in the future, this will impact the ability of the sponsor to make future issuances of asset-backed securities using the revolving pool securitization. The structure of revolving pool securitizations aligns incentives between sponsors and investors, reduces the need for fair value measurement that does not bring benefits to investors, and allows for face value measurement, which will help to minimize costs for sponsors of revolving pool securitizations.

b. Duration of the Risk Retention Requirement

Under the reproposal, sponsors would have been prohibited from selling or otherwise transferring any interest or assets that they would be required to retain under the rule to any person other than a consolidated affiliate for specified time periods. For all ABS other than RMBS, the specified time period would have been the later of two years after the closing date of the securitization or when the aggregate unpaid balance of the ABS interests has been reduced to 33 percent. For RMBS, the specified time period would have been the later of five years after the closing of the securitization or when the pool balance has been reduced to 25 percent, but in no event later than seven years after the closing of the securitization.

In response to the reproposal, commenters recommended various modifications to the length of risk retention requirements. Some commenters suggested lengthening the non-RMBS duration to three years, while other commenters questioned why only RMBS and CMBS had asset specific durations and suggested lengthening or shortening periods of time that were tied to a specific asset class or securitized asset quality. Finally, some commenters suggested eliminating the alternative sunset period contingent on the unpaid pool balance.

The agencies are adopting the sunset provisions as reproposed. The Commission lacks the data to determine an optimal duration of these risk retention requirements, and while commenters supported their positions based on relevant time periods that are tied to securitized assets, no commenters submitted relevant data or other quantifiable information. In particular, as stated in the reproposal, these time periods were chosen to strike a balance between retaining risk long enough to align the sponsors' and investors' incentives and allowing the redeployment of retained capital for other productive uses. A shorter duration was chosen for non-mortgage asset classes, because these loans tend to have shorter maturities than mortgages and thus it may not be necessary to retain risk for a longer period. The alternative sunset component contingent on the reduction of pool balance further calibrates the required duration of risk retention based on the remaining balances. By the time the loan pool balance decreases to 33 percent, the information about the loan pool performance will be largely revealed, at which point the moral hazard problem between the sponsor and the investor is likely to be significantly reduced.

We recognize that, in the case where the loan pool balance drops below the prescribed threshold (25 percent for RMBS and 33 percent for other ABS) before the prescribed number of years (five years for RMBS and two years for other ABS), the additional required duration might be costly to the sponsor. A requirement that the sponsor continue to retain exposure to the securitization once the impact of the initial uncertainty about the ABS is resolved could potentially impede allocative efficiency by limiting the sponsor's ability to redeploy capital to new securitizations or other investment opportunities. Moreover, as loan balances are paid down, the sponsor may hold more risk relative to other investors because the size of the credit risk retention piece is based on the initial size of the securitization and does not change with the current market value. Thus, sponsors could face increased levels of risk retention on a percentage of outstanding basis at the same time retained risk becomes less necessary. While economic efficiency might be increased in certain circumstances by allowing sponsors to withdraw their risk retention investment to use in new securitizations or other credit forming activities,[437] the minimum fixed duration of risk retention is appropriate to prevent structuring securitizations that would be quickly paid off to the balance threshold points (25 percent or 33 percent) for the purposes of avoiding risk retention.

5. Forms of Risk Retention Menu of Options

Rather than prescribe a single form of risk retention, the final rule allows sponsors to choose from a range of options to satisfy their risk retention requirements. As a standard form of risk retention available to sponsors of all securitizations, sponsors may choose vertical risk retention, horizontal risk retention, or any combination of those two forms. Both the vertical and horizontal forms of risk retention require the sponsor to share the risk of the securitized asset pool. The final rule also includes options tailored to specific asset classes and structures such as revolving master trusts, CMBS, ABCP, CLOs, and TOBs. Given the special characteristics of certain asset classes, some of these options permit the sponsor to allocate a portion of the shared risk to originators, allow the risk to be held by specified third parties, or

[437] *See* Hartman-Glaser, Piskorski and Tchistyi, 2012, Optimal Securitization with Moral Hazard. *Journal of Financial Economics,* vol. 104, no. 1, April 2012, pp. 186–202. They consider the optimal design of MBS contracts between a mortgage underwriter that can engage in costly hidden effort to screen borrowers and investors and show, among other things, that the maturity of the optimal contract can be short.

allow the risk to be held in an identical asset outside of the securitization.

Commenters generally supported the menu-based approach of providing sponsors with the flexibility to choose from a number of permissible forms of risk retention. These commenters believed that this provides sponsors with the flexibility to structure their risk retention requirements to accommodate current market practices.

By adopting a rule that will allow sponsors flexibility to choose how they retain risk, the agencies seek to enable sponsors to select the approach that is most cost-effective for them, while still fulfilling the purposes of Section 15G. As discussed previously, the agencies are sensitive to the need to balance the goals of risk retention (reduction of the moral hazard problem and better underwriting) with the need to facilitate the efficient deployment of capital. A flexible approach to retaining risk will permit sponsors to take into account a variety of factors, as discussed in more detail below.

Various factors are likely to impact sponsors' preferred method of retaining risk, including size, funding costs, financial condition, riskiness of the securitized assets, potential regulatory capital requirements, return on capital requirements, risk tolerances, and accounting conventions. All else being equal, sponsors may prefer the option that involves the least exposure to credit risk. For example, the horizontal form of standard risk retention creates a fully subordinated residual interest that is more exposed to the expected losses of the deal than a similarly sized vertical form, and therefore is more sensitive to the deal's credit risk. By contrast, a vertical form of standard risk retention is comparable to a stand-alone pass-through securitization, which when held by the sponsor, is the form of risk retention least exposed to a deal's credit risk. As discussed below, some sponsors may choose to use the horizontal method of risk retention or some combination of the horizontal and vertical method in order to meet the risk retention requirement.

In particular, sponsors have an incentive to calibrate the level of risk exposure that minimizes their overall cost of funding. For example, some investors may be more likely to purchase senior ABS interests if the sponsor retains a larger residual interest and thus has more "skin in the game." Alternatively, the sponsor may be unable to sell the residual interest on terms that would minimize the sponsor's cost of funding. In both instances, sponsors would prefer an option with a higher level of exposure to credit risk. This might be particularly true for securitizations that involve riskier or more opaque assets or more complicated securitization structures. As discussed previously, the potential need for retaining risk in a more costly form because the sponsor could not sell the residual interest on acceptable terms could be attenuated for registered offerings that are subject to the asset-level disclosure requirements under revised Regulation AB to the extent that investors are able to quantify risks using the required loan-level disclosures and are willing to purchase more of the residual interest on terms acceptable to the sponsor.

As the Commission discusses below, a number of the options also attempt to correspond to current market practices. By allowing sponsors to satisfy their risk retention requirement while still maintaining current market practices, the proposed menu of options approach should help to reduce additional costs of the required regime. Moreover, the flexibility sponsors have to design how they hold credit risk will allow them to calibrate and adjust their selections for each transaction according to changing market conditions.

On the other hand, because sponsors will have a choice on how to retain risk, their chosen structure may not always align interests and mitigate risks for investors in the same manner. Thus, to the extent that some forms of risk retention create disparate incentives for sponsors and investors,[438] the ability to rely on those options may not fully address some of the conflicts of interest that contribute to the moral hazard problem that characterize securitizations. In addition, the flexibility of this approach may increase the complexity of implementation of risk retention because of the wide range of possible choices available to sponsors.

a. Standard Risk Retention

The agencies are adopting the standard risk retention option as reproposed. In the reproposal, the Commission provided separate analyses of the economic effects of vertical risk retention, horizontal risk retention, or any combination of these two forms. Many commenters generally supported the reproposal to allow a sponsor to meet its risk retention obligation by using the standard risk retention option and approved of the flexibility that the proposal would provide to sponsors in structuring their risk retention. One commenter specifically expressed support for the single vertical security option, asserting that it would simplify compliance and monitoring obligations of the sponsor.

The agencies continue to believe that it is appropriate to provide flexibility to sponsors. This approach allows sponsors to minimize costs by selecting a customized combination of vertical and horizontal risk retention that suits their individual situation and circumstances, including relative market demand for the various types of interest that may be retained under the rule. To the extent that the costs and benefits of credit risk retention vary across time, across asset classes, or across sponsors, this approach would implement risk retention in the broadest possible manner such that sponsors may choose the combination of vertical and horizontal risk retention that they view as optimal. For example, if investors are unable to accurately estimate the risk of the securitized asset, the sponsor may be unable to sell the residual interest on acceptable terms, which would mean any excess vertical risk retention would be an additional cost to such a sponsor. Allowing flexibility will not only benefit sponsors but also will allow investors' demands to be more easily satisfied.

Below we discuss the economic implications of particular risk retention structures.

i. Eligible Horizontal Residual Interest

Under the eligible horizontal residual interest (EHRI) option, sponsors would hold the first loss piece, which as described above, would reflect a larger credit exposure than an equal percentage of retained risk using a form that included vertical retention. To the extent that such a holding signals to investors that the information about the asset portfolio being securitized is accurately represented and fairly priced, having this option available to sponsors may improve investor participation and lead to enhanced capital formation. However, horizontal risk retention used without vertical risk retention may not fully align sponsor incentives with the incentives of investors in all of the

[438] For example, if a sponsor is affiliated with a servicer (or has another way to influence the servicing of assets), then different forms of risk retention may change how distressed assets are serviced—more to the benefit of all investors or more to the benefit of junior tranche holders'. In most cases, investors in the more senior tranches would favor liquidation because liquidation of the securitized assets would reduce uncertainty and eliminate the credit risk of a delinquent or defaulted asset and because losses resulting from such liquidation of the securitized assets would be absorbed by investors in more subordinated tranches. Alternatively, investors in more subordinated tranches would favor a modification of the terms of a defaulted or delinquent asset because modification potentially could minimize losses.

tranches or classes. Investors who are investing in the most senior tranches will have different interests than the sponsor holding the residual interest, which is the most junior tranche, especially concerning the servicing of under-performing assets.[439]

There are several reasons why a sponsor may choose to hold a residual interest instead of a vertical interest. Sponsors may be unable to sell the residual interest or, if they are securitizing riskier loans, may hold the residual interest to increase investors' interest in more senior tranches. In particular, to the extent that a sponsor is willing to incur exposure to the first losses, investors may be willing to purchase the senior tranches at higher prices. Also, if sponsors have a cost of capital that is higher than the return provided by holding vertical risk retention, sponsors may choose to hold more subordinated tranches and more of the credit risk to generate a return sufficient to meet their required cost of capital. The holder of the residual interest generally receives a higher rate of return than any other tranche of the deal and therefore a sponsor may choose to hold horizontal risk retention in order to make the deal economically viable for the sponsor. This would increase the amount of capital available for riskier loans as sponsors' demand for loans of a higher risk increases. In all these cases, any requirement to retain a vertical interest would only impose additional costs on such sponsors.

In the reproposal, the agencies included cash flow restrictions with EHRI, reasoning that if sponsors can structure securitizations in such a way that the residual interest is able to receive cash early on in the deal then the sponsor's incentive to select loans with better underwriting may be reduced because the sponsor may be repaid all of their principal investment (''cash out of the deal'') before losses accumulate and the deal underperforms.

Many commenters supported elimination of the cash flow restrictions. They asserted that these restrictions are incompatible with a variety of securitization structures, that the certifications and disclosures to investors that would be required by the proposed cash flow restriction would create potential liability, and that there are possible ways around these restrictions such that they will not be meaningful but only increase costs to sponsors. Commenters also stated that cash flow restrictions would prohibit almost all securitizations from being issued as they are designed to pay high interest rates early on to the residual holder as compensation for risk taken, and that most of the structures in previously issued asset-backed securities would have failed the cash flow restriction tests. According to these commenters, imposing the cash flow restrictions could thus require current market participants to change their current practices, which could lead to a reduction or cessation of the securitization markets, resulting in a decrease in capital formation and reduction in allocative efficiency.

After considering the numerous comments received, the agencies have concluded that the proposed cash flow restrictions on the EHRI (as well as the alternative described in the reproposal and alternatives suggested by commenters) could lead to unintended consequences and impose unnecessary burdens on some asset classes. Therefore, the agencies have eliminated the previously proposed restrictions from the final rule. The revised disclosure requirements being adopted relating to the key inputs and assumptions underlying fair value calculations, however, should provide investors with the information necessary to analyze whether the sponsor is being conservative or aggressive in its estimate of the 5 percent risk retention holding. The rule also requires disclosure of the material terms of the residual interest. By providing this information to investors, the disclosure helps mitigate the concern that sponsors may provide accelerated returns to themselves through the residual interest since investors will be able assess the likelihood of such scenario based on this information. Eliminating the cash flow restriction requirements would eliminate the costs to sponsors associated with changing their market practice while potentially promoting competition among the sponsors for alternative structures that optimize their retention and investor preferences.

ii. Eligible Vertical Interest

A sponsor relying solely on the vertical option would hold a percentage of each tranche, resulting in an economic exposure of 5 percent of the credit risk of the entire loan pool. The primary benefit of vertical risk retention as compared to other standard forms of risk retention is that investor-sponsor incentives will be equally aligned across all ABS tranches.

Vertical risk retention is also subject to less credit risk exposure, and thus it will be a cheaper method for the sponsor to satisfy the requirement both in terms of cost of capital and in measurement and disclosure to investors. There is no requirement for sponsors to provide a fair value estimate to investors, which could reduce the cost of retaining risk relative to the costs associated with the other risk retention options. Vertical risk retention will be relatively simple for investors to evaluate because the sponsor will hold a specified percentage of each tranche. However, vertical risk retention may be less optimal for sponsors who typically hold a first loss piece with the intent of signaling higher quality of the senior tranches or for other reasons.

The benefits of the vertical form of risk retention extend to other market participants as well. By allowing sponsors to choose a vertical form of risk retention, there will be increased flexibility to choose higher yielding assets and provide greater access to credit to viable but higher-risk borrowers than would otherwise be possible through only a horizontal form of risk retention. Investors interested in holding residual interests will benefit from a vertical form of risk retention as they will be able to purchase more higher-yielding first loss pieces of securitizations, while investors who demand tranches above the first loss piece will have less supply available because the sponsor would hold 5 percent of each tranche instead of holding all of its retained risk in the residual interest.

The final rule also permits a single vertical security, as proposed. All economic considerations that apply to vertical risk retention will apply to the single vertical security except that the single vertical security may allow sponsors to comply with risk retention in a less costly manner in terms of administrative fees and accounting costs. If the sponsors' costs of risk retention are lower while still providing the same incentive alignment, then cost of credit for borrowers may be lower.

iii. Combined Risk Retention Option

The final rule allows sponsors to retain risk through any combination of a vertical form and a horizontal form provided that the total percentages of retained forms in the securitization add up to 5 percent. For example, a sponsor can hold 3 percent in the vertical form and 2 percent in the horizontal form in reliance on a combination of the horizontal and vertical forms of risk retention.

As noted above, horizontal risk retention allows sponsors to provide a stronger signal about their private information about asset quality than vertical risk retention because of the increased amount of credit exposure for

[439] *See* footnote 438.

sponsors. Hence, a sponsor choosing to retain risk in a more expensive horizontal form over a vertical form would have greater exposure to credit risk, and that sponsor's incentives should be better aligned with investors'. As previously described, by choosing a higher cost method of retaining risk, such as through the horizontal form, a sponsor can signal to the market greater certainty about the quality of assets and the level of risk in the senior tranches because the sponsor is willing to incur the losses in the lower subordination. However, the optimal size of the residual interest for a sponsor that seeks to maximize the proceeds and minimize the sponsor's overall cost of funding from securitization may not be 5 percent.

Finally, sponsors may choose to hold some residual interest in an attempt to gain a higher return on capital. In this case, again, the optimal size of the residual interest to achieve sponsor's required return may not be 5 percent. The combination of the horizontal and vertical forms reduces costs to sponsors by allowing them to hold some of their risk retention in the cheaper vertical form while still receiving credit for the residual interest they retain. Moreover, the vertical form of risk retention still allows for a more equal alignment of sponsors' interests with all types of investors because the sponsor will hold a portion of all of the tranches in the securitization.

Allowing a flexible combination of the horizontal and vertical forms accommodates various current market practices. Some asset classes have been able to monetize more of their exposure to securitized assets than other asset classes. Typically the range for RMBS has been closer to 1–3 percent of overcollateralization than to the 5 percent of fair value for the retained first loss piece required by the final rule. Thus, the flexible combination of horizontal and vertical forms will allow sponsors to continue to retain risk as they have in the past while keeping the cost of risk retention to a minimum.

The flexibility of the combination of the horizontal and vertical forms also allows sponsors to better meet demands of investors. If investors want to hold more of the residual tranche, the sponsor can hold less risk in the horizontal form and more risk in the vertical form to be able to sell interests in the residual tranche to investors. Alternatively, if there is a larger demand for more senior tranches, then sponsors can hold more risk horizontally. This flexibility will increase allocative efficiency within the ABS market. The flexible combination of the horizontal and vertical forms also increases competition among sponsors because it allows sponsors to adjust several dimensions of the securitization: risk retention costs, expected returns on retained pieces, and supply of tranches with different risk characteristics.

b. Options for Specific Asset Classes and Structures

i. Seller's Interest Option

The reproposed rule would have allowed a sponsor of a revolving master trust that is collateralized by loans or other extensions of credit to meet its risk retention requirement by retaining a seller's interest in an amount not less than 5 percent of the unpaid principal balance of the pool assets held by the sponsor. Commenters stated that the reproposed version of the seller's interest option would not accommodate all the common market practices in the master trust market. They suggested methods to broaden the options available to revolving master trusts to allow a wider variety of market practices to count as risk retention.

The agencies are revising the seller's interest option for revolving pool securitizations (referred to as revolving master trusts in the reproposal) in the final rule in order to accommodate more of the practices of sponsors that currently rely on revolving pool securitizations as an important component of their funding. These revisions recognize and accommodate the meaningful exposure to credit risk currently held by sponsors of these revolving pool securitizations, in light of the heightened alignment of incentives between sponsors and investors that attaches to their structural features. The agencies are also making a number of other refinements in the final rule in order to align the seller's interest option more closely with the mechanics of revolving pool securitizations as they are structured in the market today.

The *pari passu* seller's interest option in the final rule represents a special form of exposure to credit risk for the asset-backed security issued by a revolving pool securitization. Under this option, the sponsor must maintain the size of the seller's interest position, most commonly through the ongoing addition of receivables to the pool or repayment of investor ABS interests. Commenters also requested that the agencies accommodate other revolving pool securitizations that are common in the market and rely on a seller's interest that is structured in a different manner, which varies among the revolving pool securitizations used for certain asset classes. Commenters described two different structures, which the agencies believe should be recognized as an eligible form of risk retention under the final rule.

The agencies have recognized a series subordinated seller's interest in a revolving pool securitization as eligible risk retention in the final rule. As described by commenters, a series subordinated seller's interest is a common feature of revolving pool securitizations for certain asset classes, such as equipment leasing and floorplan financing. In these revolving pool securitizations, the sponsor is obligated, as is the case with the *pari passu* seller's interest, to maintain an undivided interest in the receivables in the collateral pool, in an amount equal to a specified percentage of the trust's outstanding investor ABS interests. Whereas the *pari passu* seller's interest is a trust-level interest equal to a minimum percentage of the combined outstanding investor ABS interests, the minimum percentage in subordinated seller's interest revolving pool securitizations may be tied to the outstanding investor ABS interests of each separate series. While the sponsor's right to receive distributions on the seller's interest included in the reproposal was required to be *pari passu,* the sponsor's right to receive distributions on its share of distributions in subordinated seller's interest revolving pool securitizations may be subordinated to varying extents to the series' share of credit losses.

Importantly, commenters noted that notwithstanding these differences with the *pari passu* seller's interest, the sponsor of a series subordinated seller's interest revolving pool securitization is still required to maintain the minimum amount of securitized assets in the pool, if the securitization is to continue revolving, through the ongoing addition of assets to the pool if necessary. The sponsor has incentives to monitor the quality of the assets added to the pool in both structures. If the sponsor replaces repaid or defaulted assets with poorly underwritten assets, those assets will, in turn, suffer losses, and the sponsor will be obligated to add even more assets. If this cycle is perpetuated and the minimum asset target is breached, the revolving pool securitization will enter an early amortization period, and the sponsor will no longer have access to future funding from the revolving pool securitization. Because the subordination of the seller's interest does not change this potential consequence and provides similar economic incentives as the *pari passu* seller's interest for the sponsor to monitor and maintain the quality of securitized assets in the pool, the final rule recognizes this ''series subordinated'' form of seller's interest as an eligible form of risk retention for revolving pool securitizations. Allowing the series subordinated seller's interest accommodates existing market practice and will therefore minimize costs to certain revolving pool securitizations, while providing the intended benefit of aligning sponsor and investor incentives which will encourage higher quality underwriting.

Commenters also described another form of seller's interest used in revolving pool securitizations for certain asset classes, such as equipment leasing and floorplan financing, which are often collateralized by various types of ''excess'' receivables. The transaction documents for revolving pool securitizations typically impose eligibility requirements on the receivables that are allowed to be included as collateral for purposes of calculating the total amount of outstanding investor ABS interests that may be issued by the revolving trust. These eligibility requirements include concentration limits on receivables with common characteristics, such as those originating from a particular manufacturer or dealer or a particular geographic area. The sponsor places assets that exceed these concentration limits (ineligible assets) in the revolving pool securitization, where they are often subject to the pledge of collateral to the holders of the ABS interests, but they are not included when calculating the amount of the seller's interest under the revolving pool securitization. Distributions on these ineligible assets are typically allocated to the sponsor, but depending on the terms of the securitization, the sponsor's claim to the cash flow from these assets may be partially or fully subordinated to the claims of investor ABS interests, and these subordination features may be at the trust level, at the series level, or some combination of both.

While the agencies are persuaded that revolving pool securitizations should be allowed to hold these receivables without violating the common pool requirement, the final rule, consistent with market practice described above, does not allow these excess receivables to be included in the measurement of seller's interest. Because these are assets that by their terms are not representative of the assets that stand as the principal repayment source for investor ABS interests issued by the revolving pool securitization, the agencies believe, in conformance with market practice, that it would be inappropriate to include them in the calculation of the seller's interest. This accommodation for existing market practice allows a greater number of existing revolving pool securitization structures to meet the risk retention requirements, which should reduce the costs of compliance with the final rule and minimize disruption to existing structures. The agencies also recognize that some revolving pool securitizations make distributions on these receivables available to cover losses on eligible pool assets, which increases the amount of credit enhancement available to investors.

The agencies are adopting the seller's interest option generally as reproposed with certain modifications to incorporate more existing revolving pool securitizations. The Commission believes that there are several benefits to recognizing the existing seller's interests in revolving pool securitizations as an eligible form of risk retention. Aligning the rule's requirements with current market practice will reduce implementation costs for sponsors using the master trust structure while still retaining the benefits that investors receive through improved selection of underlying assets by the sponsors of revolving pool securitizations. Accommodating current practice will be transparent and easy for the market to understand and will preserve current levels of efficiency and help to maintain investors' willingness to invest in the market. Accommodating current practice will also provide clarity to market participants and may encourage additional investor participation given the removal of previous uncertainty about potential changes to current practices, thereby helping to promote capital formation. Under this option, there would be a cost to sponsors of measuring the seller's interest amount on an ongoing basis in accordance with the final rule, but since ongoing measurement is a current market practice, the additional cost should be low. Unlike more traditional securitization transactions collateralized by a static pool of assets, revolving pool securitizations use a single issuing entity to issue multiple series. These accommodations should allow sponsors of revolving pool securitizations to continue to use the same issuing entity and minimize the potential disruption to the market that could be caused by bifurcating the common pool of securitized assets or any other restructuring of the issuing entities, and any of their outstanding asset-backed securities issued prior to the applicable effective date of the final rule.

As discussed above, the agencies are modifying the seller's interest option to accommodate more of the market practices that currently exist. Accommodating more market practices will reduce costs for sponsors of revolving pool securitizations that otherwise would not been able to rely on the reproposed version of the seller's interest option and thereby help to promote competition within this segment of the market.

ii. Representative Sample

The agencies also considered the alternative option of risk retention held through a representative sample of the securitized assets that was proposed in 2011, but not included in the 2013 reproposal.

While some commenters were supportive of the original proposal's inclusion of the representative sample option, many commenters were critical of the option, stating that it would be impractical to implement this option for a variety of reasons, including that it would be unworkable for various asset classes, it would be subject to manipulation, and its disclosure requirements were too burdensome. Some commenters on the reproposal asked for the representative sample to be reinstated, asserting that a revised representative sample option would be particularly useful for automobile loan and lease securitizations, and more generally, for securitizations with large pools of consumer or retail assets, such as student loans. However, these commenters did not specify the costs of not including such an option in the final rule.

The agencies continue to believe a representative sample option should not be included in the final rule because, among other reasons, it would be difficult and potentially costly for investors and regulators to monitor or verify that exposures were indeed selected randomly, rather than in a manner that favored the sponsor. In order to allow sponsors to hold a representative sample, a number of material factors would need to be considered for the sample to be truly representative. However, even if many factors are considered, a factor could potentially be missed, and as a result, sponsors would end up holding a sample that differed in a material way from the pool assets. This could lead to ineffective alignment of incentives and therefore fail to realize one of the intended benefits of the rule. Due to these concerns, the agencies have decided not to include a representative sample option in the final rule. Sponsors using this structure will incur costs to comply with the requirements of the final rule because the final rule does not include a representative sample option as one of the permissible forms of risk retention.

iii. Asset-Backed Commercial Paper Conduits Option

Under the reproposal, sponsors of ABCP conduits could either hold 5 percent of the risk using the standard risk retention option, as discussed above, or could rely on the ABCP option. The proposed ABCP option would not have required the sponsor of the conduit, which is typically a special purpose vehicle, to retain risk as long as the assets held in the ABCP conduit, which are often ABS interests in other asset classes, are not purchased in the secondary markets, and the sponsor of every ABS interest held by the ABCP conduit complies with the credit risk retention requirements. Another condition of the proposed conduit option was the requirement that the ABCP conduit have 100 percent liquidity support from a regulated institution.

Commenters generally repeated earlier requests that the agencies provide an exemption based on, or otherwise recognize, unfunded risk retention provided by banks in the form of liquidity support, program wide credit enhancement, unconditional letters of credit, and similar features, as satisfying the risk retention requirements. Commenters also requested that ABCP conduits relying on this option be permitted to use a broader range of transaction structures and purchase a wider variety of assets. Finally, some commenters suggested the elimination or modification of the proposed requirements to disclose fair value calculations and supporting information by conduit managers about an originator-seller's failure to comply with risk retention requirements, stating that such disclosure under current market conditions could risk the collapse of the particular ABCP conduit and pose a contagion risk to the other conduits.[440]

The agencies are adopting the ABCP option substantially as reproposed except for certain modifications based on comments received to accommodate a greater range of current market practices for existing ABCP structures in the ABCP option. The agencies have not adopted commenters' suggestion to permit the application of the ABCP option to certain types of assets not covered by the reproposal or transaction structures with less than 100 percent liquidity support. Restricting the option to ABCP conduits that hold only certain ABS interests is a structural safeguard that while possibly limiting the ability raise capital through ABCP conduits, will increase the alignment of incentives between sponsors of ABCP conduits and investors.

Under the final rule, eligible ABCP conduits may only purchase ABS interests in an initial issuance. By limiting an eligible ABCP conduit to holding ABS interests acquired in initial issuances, a sponsor will be in a better position to potentially influence the terms of the deal and have an effect on the quality of assets underlying the ABS interests relative to if the ABS interests were acquired in the secondary market post issuance. However, by conditioning ABCP conduit eligibility to rely on the ABCP option on the purchase of ABS interests in an initial issuance, the rule could have a negative impact on secondary markets, possibly resulting in lower liquidity and potentially decreasing the efficiency in the secondary markets for ABS interests. Additionally, the agencies understand that ABCP conduit structures that primarily relied on secondary market purchases (arbitrage ABCP conduits) performed poorly during the financial crisis.

Allowing the ABCP option provides incentive to improve underwriting while minimizing the impact on ABCP funding costs, thereby lessening the potential burden on capital formation as ABCP conduit sponsors will not need to use their capital to retain 5 percent of the ABS interest issued by the ABCP conduit. The risk retention option for ABCP conduits includes specific requirements for a regulated liquidity provider that provides liquidity support with contractual terms that meet certain requirements. We estimate that approximately half of existing ABCP conduit sponsors may need to adjust the terms of their existing liquidity support in order to comply with the requirements of the final rule, and therefore will incur costs to implement the liquidity support necessary to meet the new requirements. The liquidity support requirements are largely consistent with the exclusion from the definition of covered fund for certain ABCP conduits in the rules implementing Section 619 of the Dodd-Frank Act. As a result, the Commission believes ABCP conduits sponsored by banks, which make up the bulk of the ABCP market,[441] already have or will have liquidity support that will comply with the final rule, and therefore the new requirements will not materially increase their costs.

Maintaining current practice and requiring 100 percent liquidity coverage without regard to asset performance will be transparent and easy for investors to understand and implement, and help to maintain investor's willingness to invest in ABCP. Adoption of the liquidity coverage requirement and removal of previous uncertainty about liquidity coverage (*i.e.* under what conditions liquidity support would be provided) should also provide clarity to investors and may encourage additional investment, thereby lowering the cost, or increasing the amount, of capital formation in ABCP and underlying asset-backed securities markets. However, the liquidity support could have the effect of lowering the yields of the ABS interests because investors will face less risk compared to less than 100 percent liquidity support.

Other modifications that the agencies are making will also permit more existing market practices to be used with the ABCP option. Accommodating these market practices will reduce costs to those ABCP conduits that were not covered under the reproposed version of the ABCP option and thereby help to promote competition within this segment of the market.

iv. Commercial Mortgage-Backed Securities Option

The agencies are adopting the CMBS option largely as reproposed. The Commission continues to believe that the option provides a means to satisfy the risk retention requirements that, for the most part, will allow CMBS issuers to continue current market practice relating to techniques that align incentives and improve underwriting standards. Under the final rule, a sponsor will be able to satisfy the risk retention requirements by having up to two third-party purchasers (provided that each party's interest is *pari passu* with the other party's interest) purchase an eligible horizontal residual interest (B-piece) in the issuing entity if it is backed solely by commercial real estate loans and servicing assets. The third-party purchaser(s) would be required to acquire and retain an eligible horizontal residual interest in the issuing entity in the same form, amount, and manner as the sponsor (with the same hedging, transfer, and other restrictions) except that after five years the third-party

[440] The Commission believes that the diversification of ABS interests and the 100 percent liquidity support requirement make this scenario highly improbable.

[441] Asset-Backed Alert, March 28, 2014, lists the 20 largest ABCP conduit administrators. All but one of them are large banks. The non-bank is Lord Securities.

purchaser can sell the B-piece to another eligible third-party purchaser.

As discussed in Section 3.b.ii of this Economic Analysis, currently the B-piece investors in CMBS often hold dual roles as bond investors, if the assets remain current on their obligations, and as holders of controlling interests to appoint special servicers, if the loans default and go into special servicing. The B-piece investors are typically real estate specialists who use their extensive knowledge about the underlying assets and mortgages in the pools to conduct extensive due diligence on new deals. Such due diligence is feasible because typically CMBS have much smaller number of underlying loans in a pool.[442] Consequently, since B-piece buyers are taking the credit risk and have an ability to perform their own due diligence on securitized assets before purchasing the residual tranche, the third party holding risk effectively serves as an independent re-underwriter of the underlying loans, achieving a quality of re-underwriting consistent with the quality of underwriting of a sponsor that would retain credit risk on its own balance sheet. B-piece buyers also have the ability to affect the performance of the securitization when problems arise. Because they usually have expertise in commercial real estate and are holders of controlling interests to appoint special servicers (and often have special servicers affiliates), they facilitate restructuring of underperforming loans to maintain the structure of a CMBS. By providing for the continued retention of risk and strong incentive to the sponsor to limit potential moral hazard problems at the time the structure is put in place, the effect of the CMBS risk retention option on the moral hazard problem will likely be similar to the effect of one of the standard risk retention options.

Allowing the third-party purchaser to sell the B-piece to another eligible third-party purchaser after a minimum holding period should generate secondary market liquidity, thereby lessening the original purchaser's cost of retaining the risk and encourages greater participation in the CMBS market by eligible B-piece purchasers. The resulting secondary market transactions could generate additional benefits to CMBS investors to the extent that B-piece buyers have differential skills with respect to assessing the risk at the time of origination, monitoring performance, and engaging in restructuring activity when performance issues arise. Allowing the transfer of the B-piece will allow the transfer of the B-piece to a purchaser with specialized skills appropriate to the particular situations.

Under the final rule, use of the CMBS option requires the appointment of an independent operating advisor who, among other obligations, has the authority to recommend and call a vote for removal of the special servicer under certain conditions. This requirement may serve to limit potential conflicts of interest between the investors in senior tranches and the B-piece buyer(s), thus helping to ensure that the benefits of the risk retention requirements are preserved and extended to all investors. There will be costs, however, related to the appointment of the independent operating advisor, including, but not limited to, the payments to the advisor.[443]

The primary benefit of allowing sponsors to maintain their current market practices is to effectively achieve the intended objectives of risk retention with minimized cost to the CMBS market. Commenters generally supported the CMBS option as reproposed, with one investor commenter cautioning against further modifications to the proposed CMBS option, expressing the view that CMBS underwriting standards were beginning to deteriorate. However, some comment letters suggested changes from the reproposal.

Commenters suggested increasing the 5 percent minimum quorum requirement for a vote to replace the special servicer to 15 percent or 20 percent, and adding a requirement that no fewer than three unaffiliated investors participate in the vote. The agencies have decided to permit CMBS transaction parties to specify in the underlying transaction documents the quorum required for a vote to remove the special servicer, provided it is not more than 20 percent of the outstanding principal balance of all ABS interests in the issuing entity, with such quorum including at least three ABS interest holders that are not affiliated with each other.

The final rule includes these suggested changes to address the concern that a 5 percent quorum could allow a B-piece buyer holding 5 percent of the CMBS deal to replace the special servicer alone without consent of other investors. As discussed in Section 3.b.ii of this Economic Analysis and in Part III.B.5 of the Supplementary Information, the B-piece investors in CMBS often have an affiliate special servicer and, as holders of controlling interests, they can appoint that affiliated entity if the loans default and go into special servicing. An affiliate special servicer could make decisions about loan restructuring in the interest of its affiliated B-piece holder that are inconsistent with the interests of all investors. Thus, requiring at least three investors that are not affiliated with each other for the quorum would ensure that the economic interest of at least some senior tranche investors would be accommodated in the selection of the special servicer and subsequent restructuring.

Raising the maximum quorum requirement to 20 percent from 5 percent in the final rule will further ensure that other CMBS investors will participate in the selection of the special servicer. Limiting the maximum quorum requirement to 20 percent also ensures that investors do not face an undue burden in coordinating with other dispersed investors to call a vote to change the special servicer. Currently, transaction agreements can stipulate any quorum threshold. If a transaction agreement currently stipulates a threshold that is too high, the coordination costs attributed to collective action could prevent potentially efficient changes in the special servicer. On the other hand, with less ability to influence the selection of the special servicer, combined with an inability to disinvest until the expiration of the sunset period, B-piece buyers will have less incentive to invest in B-pieces. Hence, relative to current practices, mandating a lower maximum quorum requirement could generate benefits in some cases.

The agencies considered but did not adopt the suggestion to allow third party purchasers to hold their interests in a senior/subordinate structure, rather than *pari passu,* to match the risk of loss of each B-piece interest and the risk tolerances of each B-piece buyer. Commenters asserted that a senior-subordinated structure would better allow the market to appropriately and efficiently price the B-piece interests in a manner that is commensurate with the risk of loss of each interest, and to address the different risk tolerance levels of each third-party purchaser. However, other commenters strongly opposed allowing third-party purchasers to satisfy the risk retention requirements through a senior-subordinated structure, commenting that such a change would significantly

[442] *See also* footnote 424.

[443] According to CRE Finance World, Autumn 2012, Volume 14, No.3, pp. 47–50, the operating advisor fee rate is ''modest.'' Other costs may include delays in special servicer replacement due to the need to call for investors' vote, and a possible loss of efficiency because operating advisors may be less knowledgeable of the special servicing market than B-piece buyers.

dilute and render ineffective the risk retention requirements. The agencies have decided not to allow third-party purchasers to satisfy the risk retention requirement with a senior-subordinated structure. As noted earlier, the purpose of third-party risk retention is to create a transaction participant that would serve as an independent re-underwriter of the underlying loans. A ''senior'' B-piece holder in this structure might not be appropriately compensated for employing sufficient resources to re-underwrite a CMBS transaction because its expected return would be too low to compensate for the expenditure of resources necessary for re-underwriting. In addition, the *pari passu* requirement better aligns the interests of the most junior tranche buyer(s) with those of more senior noteholders whereas the senior/subordinated structure for the B-piece would further separate the interests of most junior tranche buyer(s) (that in this case could hold the first loss tranche that might be significantly smaller than 5 percent) from those of the senior noteholders, which could exacerbate conflicts of interest issues in this area.

Some commenters opposed the disclosure of the purchase price paid by third-party purchasers for the eligible horizontal residual interest. These commenters pointed out that such information has traditionally been viewed by all market participants as highly confidential and proprietary, and that the disclosure requirement would deter B-piece buyers from retaining risk. The Commission acknowledges that, if B-piece buyers are deterred from purchasing eligible residual horizontal interests, this could lower the liquidity of the junior tranches of CMBS and, thus, potentially increase the sponsors' cost of capital and the cost of credit for borrowers. However, the agencies continue to believe that requiring disclosure of the price at which the B-piece is sold is important to understanding the value of the third party's risk retention (and therefore whether the required amount has been retained) and would be consistent with other required fair value disclosures for any eligible horizontal residual interest retained by the sponsor that allow investors to assess the amount of risk being retained.[444] Hence, the ability of investors to quantify the amount of credit risk exposure of the B-piece buyer, and thus the level of incentive alignment with other investors, generates benefits that would not be possible if B-piece buyers were able to keep the price confidential.

The final rule provides additional flexibility for the CMBS option by allowing up to two third-party purchasers to satisfy the risk retention requirement. This provision accommodates the current market practice[445] and should facilitate liquidity of the residual piece market, contributing to a lower cost of capital for sponsors and borrowers. While commenters generally supported allowing up to two third-party purchasers to hold risk retention, one commenter recommended expanding the number of third-party purchasers to allow participation by more than two B-piece investors. The agencies do not believe it would be appropriate to allow more than two third-party purchasers in a single transaction. While allowing more than two purchasers could increase B-piece market liquidity and, in turn, reduce costs for CMBS sponsors, it also could dilute the incentives generated by the risk retention requirement to monitor the credit quality of the commercial mortgages in the pool, thereby undermining the intended benefits of the rule. Each B-piece investor who has exposure to significantly less than 5 percent credit risk, would have not enough ''skin in the game'' to be incentivized to monitor the quality of underwriting as discussed in Section 4.a.i. of this Economic Analysis.

v. Government Sponsored Entities Option

The final rule allows the full guarantee of the Enterprises under conservatorship or receivership to count as risk retention for purposes of the risk retention requirements. Because of the capital support provided by the U.S. government for the Enterprises, investors in Enterprise ABS are not exposed to credit loss, and there is no incremental benefit to be gained by requiring the Enterprises to retain risk.

Commenters generally supported allowing the Enterprises' guarantee to be an acceptable form of risk retention in accordance with the conditions proposed and did not suggest any alternatives. The agencies are adopting the Enterprise option as reproposed.

This option along with the Enterprises' capital support from the U.S. government creates a competitive advantage for the Enterprises over private-sector sponsors when purchasing non-QRM loans as long as they are conforming to the Enterprises underwriting standards. Recognizing the Enterprises' guarantee as fulfilling their risk retention requirement and the resulting additional competitive advantage over sponsors of non-QRM conforming loans has two significant economic benefits. First, it will allow the Enterprises to facilitate the availability of capital to segments of the population that might not otherwise have access through private sector channels. Second, it will provide stable funding of home financing in periods when lenders curb their lending due to limited access to capital and private-sector sponsors are unable or unwilling to meet excess demand.

A potential cost of recognizing the Enterprises' guarantee as fulfilling their risk retention requirement is that it may incentivize them to purchase loans that do not meet the QRM criteria (*i.e.,* expanding the Enterprises' conforming loans underwriting criteria), which would introduce risk that the risk retention requirement is intended to mitigate. However, analysis of loans originated between 1997 and 2009, a period that spans the onset of the financial crisis, shows that private label loans had a much higher serious delinquency rate than Enterprise purchased loans, even after accounting for different underlying loan characteristics.[446] Hence, this historical performance-based evidence suggests that Enterprise underwriting standards may offset any incentive to incur excess risk because of their capital support, at least in relation to the incentives and behaviors among private label sponsors during the same period.

If the Enterprises' conservatorship is terminated, their securitizations will no longer be exempt from risk retention requirements unless the securitized assets meet the QRM definition. This will put the Enterprises on even footing with private label securitizations in terms of risk retention, but, as was the case before the crisis, the Enterprises still carry an implicit guarantee of the U.S. government and, thus, will retain some of their funding advantage for both QRM and non-QRM securitizations. Private label securitizations may still have limited ability to be a significant source of capital to conforming non-QRM loan originations until the Enterprises wind down their activity or the implicit guarantee is eliminated. As is the case now, private label

[444] *See* Section 4.a.ii of this Economic Analysis.

[445] Based on Commercial Mortgage Alert, out of 61 private label U.S. CMBS deals in 2013 that had B-piece buyers, 50 had a single B-piece buyer, 12 had two B-piece buyers, and none of the deals had more than two B-piece buyers.

[446] *See* Joshua White and Scott Bauguess, *Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention,* (August 2013), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf.*

securitizations would not have to compete with the Enterprises for securitizations of non-conforming loans (*e.g.,* riskier non-qualified mortgage (non-QM) loans or jumbo loans), which will still fall outside of the Enterprises domain if current conforming loan underwriting standards remain in place.

vi. Open Market Collateralized Loan Obligations

A collateralized loan obligation (CLO) is an asset-backed security that is typically collateralized by portions of tranches of senior, secured commercial loans or similar obligations of borrowers who are of lower credit quality or that do not have a third-party evaluation of the likelihood of timely payment of interest and repayment of principal. Commenters distinguished between two general types of CLOs: open market CLOs and balance sheet CLOs. As described by commenters, a balance sheet CLO securitizes loans already held by a single institution or its affiliates in portfolio (including assets originated by the institution or its affiliate). An open market CLO securitizes assets purchased on the secondary market at the direction of an asset manager, in accordance with investment guidelines. Under the final rule, sponsors of CLOs are required to retain 5 percent of risk using the standard form of risk retention and have not been provided with an exemption from the rule's requirements. CLOs are subject to the same sunset provisions as other non-residential mortgage securitizations.

As an alternative to this standard risk retention, the agencies are adopting, as proposed, an option for sponsors of open market CLOs to satisfy the risk retention requirement by holding only ''CLO-eligible'' tranches for which the syndicated loan's ''lead arranger'' retains (for the duration of the loan) at least 5 percent of the tranche's value. A syndication's ''lead arranger'' is defined as a syndicated member that holds an initial allocation of the overall syndicated credit facility equal to (at least) the greater of (a) 20 percent of the aggregate principal balance and (b) the largest allocation taken by any other member (or members affiliated with each other) of the syndication group. The agencies have defined open market CLOs for purposes of the lead arranger option being adopted. The analysis below considers the impact of the risk retention requirements and the lead arranger option on the market for open market CLOs, which was the subject of many comment letters.[447]

Under the final rule, the risk retention requirements for open market CLOs are subject to the same sunset provisions as other non-residential mortgage securitizations. These provisions require CLO sponsors to retain risk until the latest of: (1) The date on which the principal balance of the securitized assets reduces to 33 percent of the original unpaid principal balance as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, (2) the date on which the unpaid principal obligations of securities has been reduced to 33 percent of the original unpaid principal obligations at the closing of the securitization transaction, or (3) two years after the date of the closing of the securitization transaction.

The loans backing CLOs typically have maturities that can extend beyond the term of the CLOs, particularly when the loans are added to the pool after issuance, which could mean that loan balances of loans held by a CLO may not necessarily decrease prior to the maturity or redemption of the CLO. Hence, the final rule may effectively require the CLO manager (as the sponsor of the CLO) to retain risk beyond the minimum sunset period. This should lessen the incentive for managers to alter the composition of the loan portfolio in a way that could harm investors relative to what may be present with a shorter sunset period.

A key difference between this lead arranger option and those related to, for example, commercial mortgage backed securities is that the CLO manager must rely on the lead arranger's continuing 5 percent retention of risk in the CLO-eligible loans, in order for the CLO manager to satisfy its risk retention obligations. Thus, unlike a portfolio of commercial mortgages, the CLO requirement extends beyond the initiation date of the securitization so that the status of the lead arrangers' continuing participation may affect the CLO manager.

The agencies received many comments about the lead arranger option, and the impact of risk retention on the market for open market CLOs. These comments can be categorized into four main areas: (1) The impact of the lead arranger option on the availability and cost of leveraged loans; (2) the unwillingness or inability of arrangers to create CLO-eligible tranches; (3) alternative options for sponsors of open market CLOs to retain risk; and (4) general concerns about the impact of risk retention on the CLO industry and the syndicated loan market.

Regarding the impact of the lead arranger option on borrowing costs, commenters asserted that the proposed option would be unworkable with existing CLO practices and therefore the risk retention requirements would result in a significant reduction in CLO issuances and a corresponding reduction in credit to commercial borrowers. Commenters further asserted that the requirement that the lead arranger retain at least 5 percent of an eligible tranche would increase the required capital and FDIC assessment charges, thereby increasing the pricing of CLO-eligible tranches, and adversely impacting borrowing costs. Moreover, some commenters noted that only a very small number of arrangers can meet the definition of ''lead arranger'' as proposed, because the syndication of leveraged loans is concentrated among a small number of banks.[448] According to these commenters, requiring lead arrangers to hold a relatively large piece of these syndicated loans on their balance sheets would cause a substantial increase in their risk-based capital requirement.[449] Further, commenters noted that the requirement to retain 5 percent of the eligible tranche, combined with the hedging and transfer restrictions, is inconsistent with sound risk management practices, overly burdensome in light of regulatory and lending limits and would reduce the lead arranger's ability to extend credit. Commenters also stated that these additional costs, imposed on the lead arranger, would be passed on to the corporate borrowers, restricting access to and cost of capital.

One commenter observed that only a handful of non-regulated entities have a sufficient amount of available capital to arrange and syndicate leveraged loans and satisfy the proposed risk retention requirements under the lead arranger option. According to this commenter, adopting the lead arranger option, as

[447] In balance sheet CLOs the originator of the loan is the sponsor or an affiliate of the sponsor. For balance sheet CLOs, economically there is no difference between the lead arranger option and standard risk retention when the sponsor is the originator or its affiliate.

[448] Based on Bloomberg L.P. data, the largest five banks arranged 47 percent of the syndicated leveraged loans in 2013.

[449] One commenter pointed out that banks and other highly regulated financial entities represent almost the entire market of originators of the loans that comprise the assets collateralizing CLOs. This commenter stated that the requirement for lead arrangers to hold additional exposure to a borrower that is unhedged until maturity of the loan is generally inconsistent with prudent lending practices and internal lending policies. Such a requirement also, impacts the amount of other banking products that such lead arrangers can extend to other borrowers.

proposed, would cause a severe contraction in CLO-related activities by regulated institutions and a significant reduction in liquidity to a critical sector of the U.S. economy. The Commission notes, however, that this conclusion assumes that other lenders will not enter the market with sufficient capital to compensate for the loss of bank capital in the event that large banks curtail their involvement in the CLO sector. For example, other commenters asserted that if the risk retention requirement caused a reduction in participation by open market CLOs in the leveraged loan market, other institutions would enter the market to fill the unmet credit needs. Ultimately, if this were to occur, the commenters asserted that non-CLO credit providers likely would incur higher costs than the CLO credit providers that have operated in the past, and these costs would be passed along to the ultimate borrowers, raising their cost of funding.

Commenters' second main area of concern was the practical ability and willingness of originators to create and retain CLO-eligible tranches. One commenter stated that the lead arranger option is not workable because the implementation difficulties associated with creating CLO-eligible tranches are substantial and observed that surveyed banks have indicated they would not be willing to take on this endeavor. In particular, to qualify for the option, CLO-eligible tranches would be required to carry separate voting rights, which the same commenter asserted would be administratively unworkable and commercially unacceptable to the other parties to the loan transaction. Commenters also expressed concern that it was unclear how a CLO would be able to monitor whether the CLO-eligible loan tranche continues to meet the necessary criteria. Commenters stated that the requirement that a lead arranger represent that the loans continue to meet the rule's criteria exposes the lead arranger to potential liability that the lead arranger cannot realistically bear. While the Commission acknowledges these concerns, the Commission also notes that, because CLOs are a major source of funding for leveraged loan originators, there is significant economic incentive for arrangers to use the lead arranger option to ensure the continued participation of CLO managers.

Other commenters argued that open-market CLOs should be exempted from the risk retention requirements altogether because the organizational structure of open market CLOs provides investors with sufficient safeguards. These commenters indicated that open market CLOs operate independently of originators and are not part of, and do not pose the same risks as, the originate-to-distribute model. They also asserted that CLO managers' interests are fully aligned with the interests of CLO investors because CLO managers bear significant risk through their deferred, contingent compensation structure, which they noted is based heavily on performance of the underlying assets. Commenters also noted that most CLO managers are registered investment advisers, with associated fiduciary duties to their clients. Commenters also noted that many CLO managers are subject to existing regulations that provide meaningful protections against imprudent or inferior underwriting, including the leveraged lending guidance released by the Federal banking agencies in 2013.[450] Commenters further asserted that existing industry best practices mitigate risks, and that CLO assets are actively managed and often include select senior secured commercial loans with investor protection features. More generally, commenters asserted that: (1) unlike many other securitizations, CLOs are securitizations of liquid assets and are structurally transparent, (2) CLOs have historically performed well even during the financial crisis, and (3) this strong performance is evidence that risk retention is unnecessary.

Some commenters proposed a new option for ''qualified CLOs'' that would codify many of the existing practices of open-market CLOs and require CLO managers to hold 5 percent of the equity tranche of at least 8 percent of the value of the CLO. As discussed below, the Commission does not believe this option would provide sufficient incentive alignment for open-market CLOs. Although some commenters stated their belief that CLO managers select and manage CLO assets free from the potential conflicts and misaligned incentives related to the originate-to-distribute model, the Commission notes that, without a risk retention requirement, there is little economic incentive to discourage practices associated with an originate-to-distribute model from developing.

The fourth category of comments reflected a general concern about the lead arranger option and the impact of risk retention on the market for open market CLOs. One commenter expressed concern that designating one tranche of a syndicated facility the CLO-eligible loan tranche would significantly affect the pricing of other tranches due to the decreased liquidity of such tranches, as such tranches would not be available for securitization in the CLO market. The same commenter noted that the universe of CLO-eligible loan tranches would be very limited and restrict the CLO manager's ability to invest in a diverse number of loans. Further, several commenters asserted that the costs of imposing risk retention on CLO managers exceeds the benefits and that the agencies have not performed an adequate economic analysis in connection with the lead arranger option.

One study by Oliver Wyman[451] claimed that as a result of the proposed requirements, credit spreads will increase from 117 to 292 basis points and costs to borrowers will increase between $2.5 billion and $3.8 billion per year because non-CLO lenders will charge a higher interest rate to leveraged loan borrowers than CLOs. To arrive at these estimates, the study assumed that CLO managers unaffiliated with a large financial institution or market participant will no longer be able to provide capital to the leveraged loan market and that credit would not be provided to borrowers through other channels.

In reaching these conclusions, the study makes several assumptions that are questionable. For instance, the study assumes that CLO managers cannot or will not be able to hold 5 percent risk retention. However, the Commission believes that there may be economically feasible means for CLO managers to meet the risk retention requirements, particularly if there is economic incentive of the magnitude described in the study (*i.e.,* predicted spread increases ranging from 100 to 200 basis points). Another assumption is that not enough lead arrangers will use the lead arranger option which will mean there

[450] *See Leveraged Lending Guidance.* However, as discussed above in Part III.B.7 of the Supplementary Information, the Federal banking agencies noted that there is evidence that increased activity in the leveraged loan market has coincided with widespread loosening of underwriting standards and that many banks have not fully implemented standards set forth in the guidance, see Semiannual Risk Perspective: Spring 2014, Office of the Comptroller of the Currency, at 5 (June 2014), available at *http://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2014.pdf,* Shared National Credits Program: 2013 Review, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency (September 2013), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20131010a1.pdf* and ''Fed Scrutiny of Leveraged Loans Grows Along With Bubble Concern'', Bloomberg News, October 1, 2014, available at *http://www.bloomberg.com/news/2014-10-01/fed-scrutiny-of-leveraged-loans-grows-along-with-bubble-concern.html.*

[451] *http://www.sec.gov/comments/s7-14-11/s71411-535.pdf.*

will not be enough CLO-eligible tranches for CLOs to be formed using the lead arranger option. Given that CLOs currently account for a significant portion of the leveraged loan market, there are significant economic incentives for loan arrangers to create CLO-eligible tranches particularly because, by not doing so, originators may not have enough demand for their issuances. Hence, lead arrangers may make CLO-eligible tranches available, which would create enough diversification and supply for CLOs to rely on the lead arranger option.

The study's third assumption relies on an estimate of elasticity of supply of credit in the leveraged loan market (*i.e.,* the change in the availability of credit associated with a given change in the loan interest rate). The study proxied for the elasticity of supply of credit with an estimate of elasticity of demand for credit in the leveraged loan market (*i.e.,* the change in the borrowers' demand for credit associated with a given change in the loan interest rate) published in another (academic) study.[452] However, the commenter's study does not justify its assumption that the elasticity of supply should be equal to the elasticity of demand. Indeed, the commenter's study implicitly assumes that demand is inelastic and would not change in response to the change in interest rate (*i.e.,* that borrowers would demand the same amount of credit regardless of the level of interest rates). The commenter's study also assumes that the credit supply curve would not shift in response to the change in interest rate (*i.e.,* as a result of entrance of new lenders).[453] Taken together, the Commission believes the assumptions in the commenter's study contribute to an estimate of the cost to the leveraged loan and the CLO industry that is likely to be significantly inflated.

More generally, there are several considerations that could affect the extent of the rule's impact on the leveraged loan market, as described in the commenter's study. One consideration is that non-CLO investors might invest more capital given the right incentives (higher yields or less risk). These investors include hedge funds, loan mutual funds, and insurance companies. Another possibility is that these investors, instead of purchasing leveraged loans on the secondary market, would join in as part of the syndication. Finally, CLO managers with lower cost of funds and capability to satisfy the risk retention requirements may replace some of the supply of credit lost due to exit from the market of CLO managers with higher cost of funds. Any of these possibilities would mitigate the loss of CLO capital as other investors invested more capital into the leveraged loan market.

Although the Commission acknowledges commenters' concerns about the lead arranger option, the Commission does not believe there is an economic justification for an exemption from the standard 5 percent risk retention requirement for CLOs. The Commission believes that the amount of risk retention included in the alternative approach suggested by commenters of a CLO option retaining 5 percent of the equity tranche of at least 8 percent of the value of the CLO transaction (effectively amounting to as low as 0.4 percent risk retention in the entire securitization) would not sufficiently address the originate-to-distribute risks in the leveraged loan market. In particular, a CLO market absent of meaningful risk retention may not have the protections against future moral hazard problems that the final rule is designed to provide. The Commission acknowledges that risk retention may generate significant upfront costs to the CLO and the leveraged loan market relative to current practices or the proposed alternatives provided by commenters. However, the Commission believes that these current practices and the proposed alternatives would not do enough to align incentives between sponsors and investors which, in the long term, could impose larger costs on the market than the risk retention requirements of the final rule.

The Commission is also sensitive to the claim by commenters that the CLO market performed well during the financial crisis in comparison to other asset classes and, in particular, to RMBS. However, the Commission believes that this claim has the benefit of hindsight, and that during the financial crisis, there were considerable concerns with the ability of borrowers to meet their financial obligations through their collateralized loans.[454] Ultimately, aggressive monetary policy resulted in sharp declines in the interest rates payable on floating-rate leveraged loans, making it easier for borrowers to meet their loan obligations. The Commission believes that it is this extraordinary influence on borrowing costs, and not the underlying market practices of CLO managers, which largely explains CLO performance during the financial crisis. Hence, CLO performance during the financial crisis does not provide a sound basis for an exemption from the rule's requirements.

The Commission believes that commenters' alternative suggestions do not create sufficient incentive alignment, or ''skin in the game,'' for sponsors to ensure that originators maintain high underwriting standards in accordance with the purposes of Section 15G. While the Oliver Wyman study claims that risk retention will have a large negative impact on the leverage loan market and the CLO industry, the Commission believes that the assumptions underlying that assessment are questionable. In particular, the study assumes that CLO managers, who currently hold 53 percent[455] of the leveraged loans sold by originators, will no longer be able to purchase leveraged loans and that a significant proportion would otherwise go unfunded. The Commission acknowledges that this may increase cost to leveraged loans borrowers, but, for the reasons explained above, the Commission believes these are likely to be at a much lower level than the study suggests. Originators may sell leveraged loans to other purchasers, in which case, as discussed below, smaller CLO managers may be affected but there would not be a significant impact on the CLO market.

Under current practices in the leveraged loan market, syndicates hold the revolving piece of the origination, which is a line of credit that allows the borrower to drawdown additional capital from the arranger. Hence, the revolving piece of a leveraged loan represents a potential future liability to the lead arranger that could ultimately increase the amount of risk retained. The agencies did not create an option for treating this future liability as retained risk. In this way, the final rule may result in the lead arranger holding more exposure to the borrower of the leveraged loan than what would be required to satisfy the risk retention

[452] Greg Nini, ''Institutional Investors in Corporate Loans'', University of Pennsylvania working paper, 2013, available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2349840.*

[453] The study asks the question ''How much ''extra'' yield would be needed to induce these non-CLO loan buyers to increase the amount of credit they are willing to supply?'' and proceeds to estimate ''the increase in credit quantity that non-CLO leveraged loan credit providers would have to supply to fully replace lost CLO capacity.''

[454] *See, e.g.,* Ng, S., and K. Haywood, 2009, ''Rates Low, Firms Race to Refinance Their Debts,'' The Wall Street Journal, June 26, 2009, *http://online.wsj.com/articles/SB124597520948957427.* They observe: ''Bankers and borrowers alike worry that the overhang could create serious problems in the years ahead if financial markets don't heal enough to allow hundreds of non-investment-grade companies to refinance their debt.''

[455] *See* Bloomberg Business Week, January 1, 2014, available at *http://www.businessweek.com/news/2014-01-31/leveraged-loan-trades-in-u-dot-s-dot-rise-to-most-since-07-lsta-says.*

requirement. Therefore, allowing the lead arranger to hold risk retention in place of the CLO manager should not diminish, and may increase, the alignment of incentives between loan arrangers and ultimate investors in the CLO, by providing strong incentives for the loan arranger to create loans with high underwriting standards.

The impact of the lead arranger option on the leveraged loan market will be determined by the likelihood that lead arrangers are willing to retain risk in the manner required and CLO managers are willing to rely on this commitment. As commenters stated, there are frictions in the market that may prevent CLO managers from purchasing CLO-eligible loans or originators from creating CLO-eligible tranches. CLO managers may not be able to ensure that the bank will meet the CLO-eligible tranche requirements for the length of the loan. In addition, the special voting rights attached to the CLO-eligible tranche may prevent other parties from wanting to create a CLO-eligible tranche.

Large commercial banks are the primary source for leveraged loan origination and may be reluctant to retain ongoing exposure to leveraged loans because the loans are typically longer term and riskier than the other assets banks usually hold on their balance sheet. As such, they may not be willing to serve as a lead arranger for the purpose of creating a CLO-eligible tranche. Should these banks choose to create CLO-eligible tranches to facilitate additional demand for their originations, it is possible that they would charge borrowers higher rates to compensate for the additional capital charge they could incur under existing regulatory requirements, or because it would impede a redeployment of capital for other projects.

CLO managers that use the lead arranger option will be relying on lead arranger commitments to hold 5 percent of the CLO-eligible tranche for the duration of the loan. A CLO manager relying on the lead arranger option would need to sell any tranches that cease to be CLO-eligible tranches due to the failure of a loan arranger to hold the required amount of risk, which could generate an otherwise unnecessary loss if the forced sale provides a buyer with leverage to negotiate a discount. However, a CLO manager should have some level of confidence in a lead arranger's ongoing commitment to meet the requirement because there will be recourse against the lead arranger for breach of contract, as the lead arranger will warrant in the transaction documents to hold 5 percent of the CLO-eligible tranche for the duration of the loan. Any costs the CLO manager incurs from the forced sale of the loan could be part of their claim against the loan arranger for breach of contract. Moreover, failure of a lead arranger to keep this commitment could harm their reputation with respect to continued participation in the leveraged loan market because potential CLO managers would be less willing to engage in their transactions, leaving the lead arranger unable to sell or face higher costs in selling CLO-eligible loan tranches or any other loans, in the future.

To accommodate potential demand for CLO-eligible tranches and the concomitant costs of the ongoing credit exposure from the risk retention requirement, lead arrangers may be willing to charge higher rates to borrowers and, as a result, continue generating revenue from underwriting, warehousing, and selling leveraged loans. There is strong incentive for loan arrangers to do so given that CLO purchases of leveraged loans currently represent about half of the total investment in the leveraged loan market.[456] The prospect of CLO managers declining to purchase non CLO-eligible loan tranches should encourage lead arrangers to hold enough exposure to create CLO-eligible tranches in order to meet current investor demand. Hence, the Commission believes that CLO managers have significant influence over, and lead arrangers will have increased incentive to facilitate, the use of the lead arranger option and the creation of CLO-eligible tranches. Moreover, if non-CLO investors perceive loans with CLO-eligible tranches as higher quality loans, this may create additional demand for CLO-eligible tranches that would lead to higher prices and lower interest rates for such loans.

The Commission acknowledges the concerns about the workability of the option expressed in the comment letters and, as described above, has considered the attendant costs, but continues to believe that adopting the lead arranger option in the final rule will provide CLOs with additional meaningful flexibility in satisfying the risk retention requirements.

If the lead arranger option is not used, then CLO managers will have to satisfy the risk retention requirement using one of the standard options. In this case, the Commission recognizes that the final rule may have differing impacts on CLO managers, which could have a negative effect on competition. The amount of capital available to managers can vary with the size and affiliations of the manager. In particular, the availability and cost of capital for managers with a relatively smaller amount of capital available to finance required risk retention may be less favorable than for managers with access to larger balance sheets or sources of capital. This could result in different funding costs between smaller and larger managers and could impact competition by creating an advantage for managers with lower funding costs, particularly larger financial institutions and banks.

If smaller CLO managers do not have sufficient available capital to hold 5 percent risk retention, then they will be unable to sponsor CLO transactions unless they are able to get funding from another source. A reduction in CLO managers may reduce the number of CLOs, which may lead to a decrease in capital formation, a decrease in price efficiency for leveraged loans, and a decrease in competition for leveraged loans. If this impairs the supply of capital to borrowers using leveraged loans, such borrowers could expect to pay higher rates or have less access to financing. This potential impact on capital formation is ameliorated to the extent that larger CLO managers—or other potential investors—are able to replace smaller CLO managers as buyers of leveraged loans. Such an outcome would benefit these other investors at the expense of smaller CLO managers.

A number of commenters asserted that the final rule would force many smaller CLO managers to exit the CLO market. Because the Commission did not have data with respect to the cost of funds for each CLO manager or each CLO manager's desired return on capital, the Commission was unable to directly analyze the potential cost of the additional capital necessary to satisfy the risk retention requirements or the relative portion of the current CLO market managed by those smaller CLO managers that would no longer sponsor CLOs as a result of the increased costs. In order to estimate the potential impact of the exit of smaller CLO managers from the market, the Commission identified and categorized 111 CLO managers known to have participated in the CLO market between 2009 and 2013

[456] *See* commentaries by Wells Capital Management, ''Global Opportunities in Bank Loans'', February 2014, available at *http://www.wellscap.com/docs/expert_commentary/global_bank_loans_0214.pdf* and by Loomis, Sayles & Company, L.P. Investment, ''The Myth of Overcrowding in the Bank Loan Market'', May 2014, available at *http://www.loomissayles.com/internet/internetdata.nsf/0/CA96B70BA0BE8BB585257CD8004F1A03/$FILE/The-Myth-of-Overcrowding-in-the-Bank-Loan-Market.pdf* for the leveraged loan investor base breakdown. Statistics from both of these sources are based on data from Standard & Poor's Capital IQ Leveraged Commentary & Data.

using categorizations that serve as a proxy for the CLO managers' access to capital, whether internal or external, and thus their potential capital capacity and ability to satisfy the risk retention requirements.[457] The first category included CLO managers that are not subject to the periodic reporting requirements of the Exchange Act and do not appear to be subsidiaries of or affiliated with other financial institutions (banks, insurance companies, diversified asset managers that managed investment vehicles other than CLOs, etc.), which the Commission believes is the set of CLO managers that may face the greatest burden in obtaining capital to finance and retain the 5 percent required risk retention. These CLO managers were responsible for 39 percent of the CLO market issuances between 2009 and 2013, 37 percent by dollar volume, and represented 48 percent of all CLO managers analyzed.

The second category included CLO managers who fall into at least one of the following categories (A) subject to the periodic reporting requirements of the Exchange Act,[458] or (B) also the sponsor of asset-backed securities other than CLOs, or (C) a bank or insurance company, or (D) affiliated with, or otherwise related to an entity described in (A), (B) or (C). These CLO managers were responsible for 61 percent of CLO issuances between 2009 and 2013 by number or 63 percent of CLO issuance by dollar volume, and represented 52 percent of the population of CLO managers analyzed. The Commission believes that the second category of CLO managers, given their affiliations, diversified business lines and demonstrated ability to raise capital in public capital markets, would have greater access to capital, whether internal or external, and would face fewer obstacles and lower funding costs to obtain the capital necessary to satisfy the risk retention requirements.

If the risk retention requirements cause certain CLO managers to exit the leveraged loan market, there could be a commensurate decrease in the supply of capital unless other investors compensate for their exit. From the above analysis, the Commission believes it would be reasonable to estimate that the exit of the first category of CLO managers from the CLO market could impact current levels of capital formation by CLOs by 37 percent, which is considerably less than Oliver Wyman lower bound estimate of 60 percent.[459] The Commission believes that a significantly greater impact would be unlikely without an exit from the market of entities with potentially easier access to capital.

The potential impact of the loss of certain CLO managers will depend on whether the CLO investors would continue to supply credit to the leveraged loan market through alternative channels. If some senior CLO tranches become unavailable, then, because of their sensitivity to credit risk, banks and other investors whose investment guidelines require purchasing of very high quality loans (*e.g.,* triple-A rated) and who buy senior CLO tranches may be less likely to provide direct investment into leveraged loan market, which offers higher risk (*e.g.,* single-B rated) investments on average. In contrast, CLO investors who seek higher returns and tend to be less sensitive to credit risk may decide to participate directly in the leveraged loan market or use other intermediaries to do so because they have an appetite for that level of credit risk. Both categories of investors may channel their investments into one of multiple existing participants in the leveraged loan market. Mutual funds, private equity funds, private equity mezzanine loan funds and credit funds (entities that are generally formed as partnerships with third-party capital and invest in loans or make loans or otherwise extend the type of credit that banks are authorized to undertake on their own balance sheet) currently invest directly in the leveraged loan market and may increase their direct purchase of leveraged loans if smaller CLO managers exit the market. Thus, there are multiple existing sources of capital that could compensate for any potential exit of some CLO managers.

Based on estimates of the CLO investor base in the Oliver Wyman study (Exhibit 4 of the study), approximately 20 percent of CLO tranches are rated ''BBB'' or lower and are held by asset managers and other investors such as hedge funds, pension funds, and structured credit funds. If certain CLO deals were no longer available, assuming that these investors in lower rated tranches would be able to find an alternative channel to invest in the leveraged loan market and the remaining 80 percent (the risk-sensitive investors that purchase higher quality tranches) would not, then the overall estimated impact of a 37 percent decline in the supply of credit from the potential exit of certain CLO managers would account for an approximately 14.8 percent reduction in supply of capital to the leveraged loan market.[460] This assumes CLO sponsors comprise approximately 50 percent of the leveraged loan market,[461] and that any resulting increase in the underlying loan rates would not encourage the emergence of other capital sources. Because risk-sensitive CLO investors have other relatively low risk means of investing in the leveraged loan market (*e.g.,* mutual funds that concentrate on leveraged loans), the Commission believes that the actual impact may be lower.

vii. Qualified Tender Option Bonds

The final rule includes two options for tender option bonds (TOBs). Both options require 100 percent liquidity protection and provide for a mechanism by which the sponsors' incentives are aligned with the investors. In the first option, the sponsor maintains horizontal risk retention unless there is a tender option termination event (TOTE), in which case the sponsor's interest converts to vertical risk retention. After a TOTE, the sponsors will receive a distribution pari passu with tender option bond holders. In a termination that is triggered by an event that is not a TOTE the sponsor will continue to hold horizontal risk retention and will receive the remaining balance after the distribution is paid to the bond holders. The second option, which is very similar to a representative sample option, allows the sponsor to sell the entire TOB but requires the sponsor to hold municipal securities from the same issuance with a face

[457] CLO market issuance data and the list of CLO managers that were analyzed are from the Asset-Backed Alert database. The Commission categorized CLO sponsors that issued CLOs in the U.S. between January 1, 2009 and December 31, 2013. In order to estimate the possible impact of the risk retention requirement we examine the fraction of the CLO market that each group comprises. A sponsor's category was determined by using the 2014 Fitch Ratings CLO Asset Manager Handbook, sponsors' Web sites and other publicly available information. If it was not immediately apparent which category best described a manager, a conservative approach was taken and such manager was included in the category of managers with limited access to capital.

[458] The second category of CLO managers would also include those CLO managers that maintain a listing of a class of securities on an exchange in a non-U.S. jurisdiction.

[459] The Oliver Wyman estimate is based on a sample of the top 30 CLO managers and the assumption that managers that could feasibly hold the 5 percent risk retention make up 25 percent of the CLO assets under management.

[460] 14.8 percent is the product of the CLO market share of the leveraged loan market, 50 percent, the CLO managers market share of those CLO managers that the Commission believe it would be reasonable to assume could exit the CLO market, 37 percent, and the fraction of risk-sensitive investors in such CLOs that would not invest through other means, 80 percent (the percentage of risk-sensitive investors assumed by the Oliver Wyman study).

[461] *See* footnote 456 for references.

value of 5 percent of the deposited municipal security.

Commenters suggested providing a full exemption for TOBs, not counting TOBs as a securitization, or allowing third-party risk retention. Commenters also requested an exemption or recognition of unfunded risk retention in the form of liquidity support. They also commented on the cost to the TOB market, however, no commenter provided data to allow us to calculate potential costs from requiring risk retention to the TOB market. Requiring TOBs to hold risk retention imposes a cost on sponsors who were not currently retaining exposure to credit risk in a form permissible under the final rule.

After considering comments, the agencies have decided to adopt the reproposal options with some changes to further accommodate market practices. The agencies were not persuaded to create a structural exemption for TOBs, as commenters requested, as this would exempt future TOB structures, with unknown incentive alignment, from risk retention. Under the final rule, the agencies are accommodating the bulk of those structures currently issuing in the market.

By accommodating current market practice, these options help reduce the cost of retaining risk but still effectively align the incentives between sponsors and investors. The first option, by accommodating TOB tax requirements, allows TOBs to hold horizontal risk retention. In the absence of this accommodation, any TOB that tried to retain risk using the standard horizontal form would be in violation of the IRS tax code, invalidating the tax exemption of the TOB structure. By allowing TOB sponsors to hold horizontal risk retention while maintaining their tax exemption the first option provides additional flexibility for TOB sponsors to retain risk in a manner that better suits their specific needs, thereby reducing compliance costs. At the same time, investor-sponsor incentive alignment is maintained because sponsors have horizontal risk retention for the duration of the TOB unless a TOTE occurs at which time the TOB is terminated and the sponsor shares any losses with the investors in a pro-rata manner.

The agencies believe that the second option described above is appropriate in this specific context (as opposed to other ABS markets where the agencies do not adopt a representative sample option) because most TOBs are made up of one municipal bond, which is the same bond held by the sponsor. Thus, there are no characteristics of underlying assets that might make the representative sample different from the underlying assets, thereby skewing incentives between the sponsor and investor different. Consequently, the second option does not pose the same complexities and costs that make the representative sample option not feasible in other contexts. As with the first option, permitting this additional flexibility will help to reduce costs for TOB sponsors without jeopardizing investors' interests. In addition, the alignment of incentives may encourage investors to invest in the TOB market, which may increase capital formation. If there are more investors, liquidity will also increase, which may lead to increased price efficiency and reduce the cost of capital within the TOB market.

As mentioned above, existing TOB transactions typically have a 100 percent liquidity guarantee, which the sponsor (or an affiliate) may be providing. Thus requiring the sponsor to retain 5 percent of the risk despite this liquidity guarantee will impose additional costs but helps to ensure that the sponsor is selecting high-quality municipal bonds and not selling off their risk to a third party. The Commission also acknowledges that because these options are based on current TOB structures it may be too costly for new structures to be created. This may impact competition by creating a barrier to entry for future novel types of TOB structures.

viii. Alternatives

In developing the forms of permissible risk retention to be included the final rule, the agencies considered a number of alternative approaches. Some of the alternatives were suggested by commenters and considered by the agencies following the previous rule proposals.

In response to the reproposal, for instance, several commenters requested that the final rule recognize other forms of, or substitutes for, risk retention such as: third party credit support, including insurance policies, guarantees, liquidity facilities, and standby letters of credit; 5 percent participation interest in each securitized asset; representations and warranties; ''contractual'' risk retention; private mortgage insurance; overcollateralization; subordination; and conditional cash flows. One commenter requested that the final rule, at a minimum, should permit such forms of unfunded risk retention for a sub-set of sponsors, such as regulated banks. Another commenter asserted that the final rule should provide more flexibility by allowing sponsors to satisfy their risk retention requirement through a combination of various means and that the rule should not mandate forms of risk retention for specific types of asset classes or specific types of transactions.

The agencies have generally declined to recognize unfunded forms of risk retention for the purposes of the final rule, except in the case of the Enterprises under the conditions specified for their guarantees. The Commission acknowledges that recognizing unfunded forms of risk retention could help to reduce the costs of compliance, since many of these features are currently used, to varying degrees, in the securitization market. However, because these forms of credit support generally are not funded at closing, they may not be available to absorb credit losses at the time such losses occur. Therefore, the Commission believes that unfunded forms of risk retention fail to provide sufficient alignment of incentives between sponsors and investors and could impose unwarranted costs on investors if recognized as an eligible form of risk retention.

Further, the agencies received several comments requesting that the final rule include a representative sample or participation interest option.[462] The agencies considered allowing for loan participations as a means of satisfying the risk retention requirements. The agencies were concerned that offering loan participations as a standard option would introduce substantial additional complexity to the rule in order to ensure that these forms of retention were implemented in a way that ensured that the holder had the same economic exposure as the holder of an ABS interest. In addition, the agencies were concerned that permitting these types of interests to be held as risk retention could raise concerns about regulatory capital arbitrage. Accordingly, the agencies decided not to add a loan participation option to the menu of risk retention options. Since, according to one commenter, the option currently is not widely used by the market, the Commission believes that there may be little economic benefit to allowing this option.

c. Allocation to the Originator

The final rule permits the originator to share the risk retained by the sponsor. Specifically, the rule permits a sponsor to reduce its required risk retention obligations in a securitization

[462] *See* Section 5.b.ii of this Economic Analysis for a discussion of comments on a representative sample option.

transaction by the portion of risk retention obligations assumed by one or more of the originators of the securitized assets as long as the originator originates at least 20 percent of the securitized assets in the underlying asset pool. The originator is required to hold its allocated share of the risk retention obligation [463] in the same manner as would have been required of the sponsor, and subject to the same restrictions on transferring, hedging, or financing the retained interest.

Comments on the allocation-to-originator proposal focused on the 20 percent threshold for allocation and the requirement that an originator to which risk retention was allocated share pro rata in all of the losses allocated to the type of interest (*i.e.,* horizontal or vertical) it holds rather than only the losses on assets that it originated. Some of the commenters asserted that the 20 percent minimum should be eliminated and that it would hurt small originators while another commenter supported the limit and asserted that it protected small originators. With respect to the required pro rata sharing by the originator, commenters stated that because securitization tranches are developed so that tranche holders share *pari passu* in losses, it would cause unnecessary complexity to limit an originator's interests to the loans that it had originated. The agencies concluded that the changes to the reproposal suggested by the commenters are not necessary or appropriate. Therefore, the agencies are adopting the option largely as reproposed with minor changes.

This option benefits sponsors by allowing them to reduce their costs of retaining risk by sharing the costs with willing originators. This is also a benefit to investors as incentives are aligned at the level closer to loan origination, which could increase investor confidence and improve capital formation. As commenters noted, the allocation to originator option may create barriers to entry for smaller originators who will not be able to afford to share in retaining risk and therefore find their portfolios less liquid or more costly for sponsors to purchase. This would negatively affect competition within the securitization market. However, as noted above, the 20 percent threshold serves to make the allocation option available only for entities whose assets form a significant portion of a pool and who, thus, ordinarily could be expected to have some bargaining power with a sponsor. This will prevent sponsors from forcing the allocation to originator on smaller originators as a condition of buying the loans they originate that can increase cost of capital for such small originators or force such originators from the market thereby reducing competition. In addition, allowing smaller originators to retain a smaller fraction of credit risk of the pool could dilute the incentives generated by the risk retention requirement to monitor the credit quality of the loans in the pool, thereby undermining the intended benefits of the rule. A benefit of the adopted approach is that larger originators will be are able to help smaller sponsors that may have a harder time retaining risk and otherwise would not participate in the asset-backed securities market. Providing more sponsors with feasible options in meeting the requirements may increase capital formation and allocative efficiency.

d. Hedging, Transfer and Financing Restrictions

Under the final rule, a sponsor and its consolidated affiliates generally would be prohibited from hedging or transferring the risk they are required to retain, except for currency and interest rate hedges and some index hedging. Additionally, the sponsor and its consolidated affiliates would be prohibited from financing the retained interest on a non-recourse basis.

While some commenters supported the proposed restrictions on hedging, others criticized the provisions as being overly restrictive, and certain commenters requested clarification as to the scope of the proposed restrictions. According to some commenters, the proposed restrictions were overly broad, raising questions about what constitutes permissible and impermissible hedges.

The agencies are adopting hedging, transfer and financing restrictions as reproposed. Without the hedging and transfer restrictions, sponsors could hedge/transfer their (credit) risk exposure to the retained interests, thereby eliminating the ''skin in the game'' intent of the rule. Thus, the restriction benefits investors by preventing actions that could undermine the purpose of the final rule. More narrowly tailored restrictions could impose costs on investors by inadvertently excluding transactions that have the effect of hedging or transferring credit risk. On the other hand, the broad nature of the adopted restrictions could create uncertainty about which transactions are covered by the prohibition. This uncertainty may induce strategic responses that are designed to evade the rule. For example, derivative or cash instrument positions can be used to hedge risk, but it may be difficult to determine whether such a hedge is designed to evade the rule.

Costs related to the hedging and transfer restrictions include direct administrative costs and compliance monitoring costs. The hedging, transfer, and financing restrictions cover sponsors and their affiliates, and, thus, to assure compliance a sponsor must track both its own portfolio and the portfolios of all its affiliates to verify that no prohibited transactions are included in the aggregate portfolio. Such tracking may present additional challenges for large financial organizations with many affiliates. However, because the hedging and transfer prohibitions cover only hedging against the risks of the specific pool or securities based on the specific pool, the ultimate cost of monitoring compliance should be minimal even for large organizations.

6. General Exemptions

In certain cases the agencies have determined to exempt asset classes from the risk retention requirements altogether or adopt reduced risk retention requirements. As discussed below, the Commission believes these exemptions are warranted because there is either sufficient incentive alignment already in place or other features to make further constraints unnecessary to address moral hazard concerns. In particular, the securitizations of these exempted asset classes have characteristics that help to ensure that the quality of the assets is high. For example, if the pool of assets are drawn from an asset class with a low probability of default, opportunities to exploit potentially misaligned incentives are fewer and investors may have a correspondingly lesser need for the protection accorded by risk retention requirements. Below the Commission describes the particular costs and benefits relevant to each of the asset classes that the agencies are exempting from risk retention.

a. Federally Insured or Guaranteed Residential, Multifamily, and Health Care Mortgage Loan Assets

Consistent with Section 15G, the agencies are adopting an exemption from the risk retention requirements for any securitization transaction that is collateralized solely by residential, multifamily, or health care facility mortgage loan assets if the assets are insured or guaranteed in whole or in part as to the payment of principal and interest by the United States or an

[463] The amount of the retention interest held by each originator that is allocated credit risk in accordance with the final rule is required to be at least 20 percent, but not in excess of the percentage of the securitized assets it originated.

agency of the United States. The agencies are also adopting an exemption from the risk retention requirements for any securitization transaction that involves the issuance of ABS if the ABS are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States and that are collateralized solely by residential, multifamily, or health care facility mortgage loan assets, or interests in such assets.

Several commenters expressed support for the exemption for securitization transactions collateralized solely by assets (or that involve the issuance of ABS) that are insured or guaranteed as to the payment of principal and interest by the United States or its agencies. One commenter urged the agencies to extend the government-backed exemptions to ABS backed by foreign governments. Another commenter requested that the agencies clarify that GSE securitizations of multifamily loans are exempt from the risk retention requirements.

Risk retention is not currently mandated or practiced for these securitizations and, thus, this exemption will maintain consistency with current market practice. Because these securitizations are guaranteed by the United States or its agencies, and there is no default risk beyond what is otherwise priced in a U.S. Treasury security, there is no benefit to investors from sponsors retaining risk and it would otherwise create costs to sponsors where they are not necessary. However, the exemption will provide continued incentives to sponsors to use federally insured or guaranteed assets, which increases the value of the securities sold. This could have an adverse impact on the capital-raising ability of sponsors offering securitizations in the same asset classes where the underlying assets are not federally insured or guaranteed, requiring these sponsors to compete for investor capital by offering higher yields and thereby selling asset backed securities interests at lower prices. As a result, there may be less demand from sponsors and investors to securitize these (non-federally insured or guaranteed) assets under private labels, which would impede the capital formation process in public markets for originators in the same asset classes that do not qualify under these programs. This could, in turn, increase borrowing costs for underlying borrowers in these assets classes.

There would be potentially significant effects, however, from not granting this exemption. In particular, these programs provide subsidized access to credit for consumers who may not otherwise qualify for loans underwritten by private issuers, and thereby promote social benefits in the public interest. For example, FHA-insured mortgages enable many home buyers, particularly those with impaired credit or who are first time buyers, to purchase a home with a low down payment that may not otherwise be possible because they would not qualify for a privately underwritten mortgage.[464] The economic footprint of this program is large. At the end of 2013, the FHA had 7.8 million active loans with insurance in force,[465] and during that year (2013), insured 1.3 million new mortgages with the total loan value of $240 billion,[466] larger than all other federally insured loan programs combined.[467] In total, the FHA provided mortgage insurance to more than 15 percent of households that purchased houses in 2012.[468]

The exemption from the risk retention requirements for securitizations of federally insured or guaranteed loans will not provide for the incentive alignment that sponsors would otherwise have with investors in the securitization if they had an economic exposure to the performance of the securitization. We note, however, that under one large federally guaranteed program, the program run by the U.S. Department of Veterans Affairs (VA), the lender has some stake in how the borrower performs unless the lender sells the loan. The VA provides insurance in the form of a first-loss guarantee,[469] but VA lenders have residual risk after the VA's first-loss obligation is exhausted. We also note that mortgage loans guaranteed by both FHA and VA programs performed better than mortgage loans securitized through private-label RMBS. For instance, both VA-guaranteed and FHA-insured mortgages originated in 2006, at the peak of the housing boom, had a significantly lower serious delinquency rate (15 percent for VA-guaranteed loans,[470] and between 18 percent[471] and 31 percent[472] by different estimates for FHA-insured loans) than mortgages securitized through private-label RMBS transactions (58 percent).[473] Although risk retention requirements were not historically practiced in private label securitizations, and delinquency rates of securitizations with risk retention during the mortgage crisis period are therefore not available, the disparity in performance between VA- and FHA-insured loans and other loans purchased for private label securitizations suggests that the combination of underwriting practices, mortgage insurance premiums, and lenders' residual risk exposure, has a material impact on the mitigation of the moral hazard problem in the securitization process.

While the historical loan performance data indicate that FHA-insured mortgages performed better than other mortgages purchased by private label securitizations, one commenter was concerned that, with the exemption, the increase in the FHA's share of the market will be difficult to shrink to a more rational proportion of the mortgage market. While the current 15 percent market share is considerably greater than 4 to 6 percent market shares during the 2004 to 2007 period, it is consistent with the historical market shares of between 12 and 14 percent during the 1993 to 2002 period, and below the 19 percent market share recorded in 2009 and 2010.[474] Hence,

[464] The Federal Reserve Board Report to the Congress on Risk Retention, October 2010, available at *http://www.federalreserve.gov/boarddocs/rptcongress/securitization/riskretention.html.*

[465] FHA Single Family Loan Performance Trends, January 2014, Table 3, available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/hsgrroom/loanperformance.*

[466] Quarterly Report to Congress on FHA Single-Family Mutual Mortgage Insurance Fund Programs, 2014, Quarter 1, Exhibits A–1 and A–2 available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/oe/rpts/rtc/fhartcqtrly.*

[467] Other federal mortgage loan guarantee programs include programs run by the Department of Veterans Affairs, the Farm Service Agency (FSA), the Rural Housing Service (RHS), and the Department of Housing and Urban Development's Office of Public and Indian Housing (PIH). Among them, for example, U.S. Department of Veterans Affairs guaranteed 630,000 loans in 2013 and Rural Housing Service guaranteed 163,000 loans in 2013, see 2013 VBA Performance and Accountability Report available at *http://www.benefits.va.gov/reports/annual_performance_reports.asp* and USDA Rural Development Housing Obligations Fiscal Year 2013 Year-End Report available at *http://ruralhome.org/storage/documents/rd_obligations/fy2013/yearend/usdard-fy13-ye-obligations-combined.pdf.*

[468] *See* FHA Share of Home Purchase Activity, June 2012, available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/oe/rpts/fhamktsh/fhamkt.*

[469] 25 percent of the loan amount with a minimum guarantee of $36,000.

[470] *See* Table 1 in Urban Institute Commentary, July 2014, ''VA Loans Outperform FHA Loans. Why? And What Can We Learn?'' available at *http://www.urban.org/UploadedPDF/413182-VA-Loans-Outperform-FHA-Loans.pdf.*

[471] *See* the FHA Loan Performance Trends report available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/hsgrroom/loanperformance.*

[472] *See* footnote 471.

[473] The serious delinquency rate for mortgages securitized through private-label RMBS is calculated by DERA staff based on MBSData dataset.

[474] *See* FHA Share of Home Purchase Activity, June 2012, available at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/oe/rpts/fhamktsh/fhamkt.*

the current FHA market share does not seem out of proportion relative to certain previous periods. Instead, the trend shows a strong counter cyclical relation with the health of the private market, consistent with the benefits of a federally insured program for home mortgage that provides access to capital when private markets are unable to do so.

b. Securitizations of Assets Issued, Insured or Guaranteed by the United States or any Agency of the United States

Consistent with Section 15G, the final rule contains exemptions from risk retention for any securitization transaction if the ABS issued in the transaction were (1) collateralized solely (excluding servicing assets) by obligations issued by the United States or an agency of the United States; (2) collateralized solely (excluding servicing assets) by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than residential, multifamily, or health care facility mortgage loan securitizations discussed above); or (3) fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States. Also consistent with Section 15G, the final rule contains an exemption from risk retention for ABS issued or guaranteed by any state of the United States (including a political subdivision or public instrumentality of a state).

One commenter requested that the final rule retain the full exemption for securities issued by a state (including a political subdivision or public instrumentality of a state), and for securities that meet the definition of a qualified scholarship funding bond. This commenter requested that the exemption for state-issued securities and qualified scholarship funding bonds be extended to both securities issued on a federally taxable basis and securities issued on a federal tax-exempt basis. Another commenter urged that the agencies clarify that all securities issued by housing finance agencies and other state government agencies and backed by loans financed by housing finance agencies are exempted.

Risk retention is not currently mandated or practiced for these asset classes and thus, this exemption maintains consistency with current market practice. Because investors will be sufficiently protected from loss by the government guarantee that applies to these securities, there is no benefit to investors from sponsors retaining risk, and it would otherwise create costs to sponsors where they are not necessary. However, as with the exemption for federally insured mortgages, this exemption will incentivize sponsors to use federally insured or guaranteed assets, which will have an impact on competition with other assets that are not federally insured or guaranteed.

c. Certain Student Loan Securitizations

The final rule provides a separate exemption for securitization transactions that are collateralized by student loans that were made under the Federal Family Education Loan Program (FFELP). Under the final rule, a securitization transaction that is collateralized solely by FFELP loans that are guaranteed as to 100 percent of defaulted principal and accrued interest will be exempt from the risk retention requirements. A securitization transaction that is collateralized solely by FFELP loans that are guaranteed as to at least 98 percent of defaulted principal and accrued interest will have the sponsor's risk retention requirement reduced to 2 percent. All other securitizations collateralized solely by FFELP loans will have the sponsor's risk retention requirement reduced to 3 percent. Because loans underlying FFELP student loan securitizations are federally guaranteed from 97 percent to 100 percent depending on the date of origination, and there is little to no default risk beyond what is otherwise priced in a U.S. Treasury security, there is no benefit to investors from sponsors retaining risk and it would otherwise create costs to sponsors where they are not necessary.

Several commenters suggested different ways to expand the scope of the exemption or add new categories of student loans to the exemption. Other commenters recommended that the agencies accept alternative forms of risk retention for FFELP loan securitizations. The suggested alternative forms of risk retention include a simplified representative sample method, an exemption for on-balance sheet transactions where the structure clearly demonstrates at least 5 percent risk retention, initial equity contribution, overcollateralization, and other unfunded forms of risk retention.

The agencies believe that expansion of the definitions of exempted assets would undercut the purpose of risk retention of aligning incentives of sponsors and investors because other student loans would not be guaranteed by the U.S. government and, thus, would be subject to the same moral hazard problem described above. The agencies have also generally declined to recognize unfunded forms of risk retention for the purposes of the risk retention rule and continue to believe that unfunded forms of risk retention fail to provide sufficient alignment of incentives between sponsors and investors.

The economic impact of this exemption will likely be minimal because FFELP was eliminated in 2010 and student loans were no longer issued under the program after June 2010.[475]

d. Resecuritizations

The proposed rule would have provided two exemptions for certain resecuritizations where duplicative risk retention requirements would not appear to provide any added benefit. The first of these exemptions would have applied to pass-through resecuritizations that met certain specified conditions. The second one would have applied only to resecuritizations of certain first pay classes of mortgage backed securities. Under the reproposal, sponsors of resecuritizations that were not structured to meet the terms of one of these two exemptions would have been required to meet the credit risk retention requirements with respect to the resecuritization transaction unless another exemption was available.

The agencies received a number of comments on the proposed resecuritization exemptions. The comments did not raise specific objections or concerns with either of the two proposed exemptions, but generally urged the agencies to expand the exemptions to other types of structures, including those that re-tranche credit risk. Commenters noted that applying risk retention to resecuritizations of asset-backed securities that are already in the market, especially where the underlying interests are asset-backed securities compliant with the risk retention requirement, cannot alter the incentives for the original ABS sponsor to ensure high-quality assets. Other commenters stated that the lack of a broad resecuritization exemption would negatively affect markets by making it harder for investors to re-structure and sell existing ABS. A number of commenters stated that the agencies should provide an exemption for resecuritizations of ABS that were issued prior to the effective date of the rule. Still others expressed the view that the agencies could develop an exemption that would allow credit tranching in resecuritized ABS while

[475] Health Care and Education Reconciliation Act of 2010, *Pub. L. 111–152, § 2201, 124 Stat. 1029, 1074.*

limiting the scope of such exemption, such as by excluding actively managed pools, to address the agencies' concerns with CDOs and similar structures.

The agencies are adopting these exemptions as reproposed. For transactions that meet the exemptions' requirements, the resecuritization process would neither increase nor reallocate the credit risk of the underlying asset-backed securities because, by definition, there is no tranching of the credit risk in a pass through security. Hence, the resecuritization does not alter the incentive alignment present in the original securitizations that are already compliant with the risk retention requirement. Under the final rule, sponsors of resecuritizations that do not have one of the structures described above would not be exempted from risk retention. These resecuritization transactions re-tranche the credit risk of the underlying asset-backed securities, and are subject to the same moral hazard problem that exists in the underlying securitizations, because sponsors' discretion in the choice of underlying securitizations allows for the reallocation of credit risk. Hence, these resecuritizations will be subject to risk retention requirements to the same extent as the underlying asset-backed securities (unless the underlying securities qualify for an exemption). Thus, not exempting these resecuritizations is consistent with the purposes of the rule and lessens the likelihood of unwarranted costs on investors.

Because the exemption would allow the creation of securities that may be used to aggregate asset-backed securities backed by small asset pools, the exemption for these types of resecuritization could improve access to credit at reasonable terms to consumers and businesses by allowing for the creation of an additional investment vehicle for such asset pools. This, in turn, would lead to increased liquidity of such pools and attendant decrease in cost of capital for some borrowers. However, the final rule may also have an adverse impact on capital formation and efficiency if they make certain resecuritization transactions costlier or infeasible to conduct because of two layers of credit risk retention.

e. Other Exemptions and Alternatives

The reproposal also included exemptions for utility legislative securitizations, seasoned loans, and securitization transactions that are sponsored by the FDIC acting as conservator or receiver.

The agencies received no comments on the utility legislative securitization exemption, and are adopting the exemption as reproposed. The agencies continue to believe the implicit state guarantee in place for these securitizations addresses the moral hazard problem discussed above and adding the cost of risk retention would create costs to sponsors where they are not necessary as the incentive alignment problem is already being addressed.

The agencies received a number of comments on the seasoned loan exemption. Commenters generally favored expanding the seasoned loan exemption, although they differed in how to expand the exemption. Because seasoned loans have had a sufficient period of time to prove their performance, adding the cost of risk retention would create costs to sponsors where they are not necessary as any risk associated with the underlying assets' moral hazard problem will have manifested itself.

Risk retention is not currently mandated or practiced for these asset classes, and thus, permitting these exemptions will maintain consistency with current market practice. As discussed above, because these assets classes have unique features that sufficiently protect investors from loss, there is no benefit to investors from sponsors retaining risk, and it would create costs to sponsors where they are not necessary. However, providing these exemptions will incentivize the creation of utility legislative securitizations and securitizations with seasoned loans, thus potentially lowering the cost of capital formation for these loans.

In the reproposal, the agencies provided an exemption from risk retention for securitization transactions that are sponsored by the FDIC, acting as conservator or receiver. One commenter expressly supported this exemption, noting, among other things, that it would help the FDIC maximize the value of assets in conservatorship and receivership. The agencies are adopting the FDIC securitization exemption as reproposed. There is no benefit to investors from FDIC retaining risk on its securitizations because its actions are guided by sound underwriting practices and the quality of the assets is carefully monitored in accordance with the relevant statutory authority, and absence of exemption would otherwise create costs to FDIC where they are not necessary.

In response to the reproposal, commenters also asked for exemptions for other specific asset classes such as: Corporate debt repackagings, legacy loan securitizations, securitizations of unsecured direct obligations of the sponsor, and servicer advance receivables. These asset classes have either unfunded risk retention or include loans created before the new underwriting qualifications were in place and they do not have features that mitigate the moral hazard problem. Thus, providing an exemption would impose an unwarranted cost on investors.

f. Safe Harbor for Certain Foreign-Related Securitizations

The final rule includes a safe harbor provision for certain, predominantly foreign, transactions based on the limited nature of the transactions' connections with the United States and U.S. investors. Specifically, the safe harbor excludes from the risk retention requirements transactions in which, among other limitations, no more than 10 percent of the value of the ABS interests are sold to U.S. persons and no more than 25 percent of the assets collateralizing the ABS assets are acquired from U.S. persons. The safe harbor is intended to exclude from the risk retention requirements transactions in which the effects on U.S. interests are sufficiently remote so as not to significantly impact underwriting standards and risk management practices in the United States or the interests of U.S. investors.

Commenters on the proposal generally supported the existence of a safe harbor for certain foreign securitizations. A few commenters suggested increasing the 10 percent limit on the value of ABS interests permitted to be sold to or for the account of U.S. persons. These commenters also requested that the agencies clarify that the 10 percent limit applies only at the time of initial issuance and does not include secondary market transfers. Commenters also proposed to exclude from the 10 percent limitation (A) securitization transactions with a sponsor or issuing entity that is a U.S. person in which no offers are made to U.S. persons and (B) asset-backed securities issuances that comply with Regulation S under the Securities Act.

Several commenters requested that the rule provide for coordination of the rule's risk retention requirement with foreign risk retention requirements, including by permitting a foreign sponsor to comply with home country or other applicable foreign risk retention rules. In this regard, some commenters stated that the U.S. risk retention rules may be incompatible with foreign risk retention requirements, such as the European Union risk retention requirements and, accordingly, that sponsors required to comply with both U.S. and foreign risk retention regulations could be subject to conflicting rules.

As noted in the reproposal the costs of the foreign transaction safe harbor should be small. There will be negligible effect of the safe harbor on efficiency, competition and capital formation in the United States (compared to the universal application of the risk retention rule) because the affected ABS are predominantly foreign with limited connection to U.S. markets. As noted above, the foreign transaction safe harbor is narrowly tailored to capture only those transactions in which the effects on U.S. interests are sufficiently remote so as not to significantly impact U.S. underwriting standards and risk management practices or the interests of U.S. investors. The agencies asked for comment on whether or not the 10 percent proceeds trigger should be different. Commenters suggested the proceeds trigger be raised to 20 percent or 40 percent. The agencies are adopting the foreign safe harbor provision as reproposed. The relatively narrow scope of the foreign safe harbor provision may have negative effect on foreign sponsors that seek U.S. investors because they may need to satisfy risk retention requirements of two jurisdictions (their home country and the United States). In addition, the rule may reduce competition and investment opportunities for U.S. investors because foreign securitizers may exclude U.S. persons from their transactions to avoid triggering the risk retention requirements. These costs may be mitigated by the fact that the final rule provides flexibility for sponsors with respect to the forms of eligible risk retention, which may permit foreign sponsors seeking a material U.S. investor base to retain risk in a format that satisfies both home country and U.S. regulatory requirements, without jeopardizing protection to the U.S. investors in the form of risk retention. Moreover, raising the trigger could provide sponsors relying on the safe harbor with a competitive advantage of not needing to hold risk retention. The larger the amount of the securitization foreign sponsors are allowed to sell to U.S. persons without triggering risk retention, the more competition domestic securitization deals will have to face.

7. Reduced Risk Retention Requirements for ABS Backed by Qualifying Assets

As contemplated by Section 15G, the agencies are adopting exemptions for securitizations consisting solely of automobile loans, commercial real estate loans, commercial loans, and residential mortgage loans that satisfy certain specific underwriting standards that indicate a low credit risk with respect to the loan.[476]

The benefit to exempting qualifying assets from risk retention is that it will avoid tying up sponsors' capital in transactions in which the underlying assets are subject to underwriting standards that indicate a low credit risk and thus a diminished need for risk retention to address the moral hazard problem. Avoiding this unnecessary restraint will leave sponsors with more capital available to deploy for other and potentially more efficient purposes. The economic consequences of exempting qualifying assets are analogous to the discussion associated with requiring stricter lending standards for a ''qualified mortgage'' (QM) in the residential lending market. Also there will be fewer administrative, monitoring and compliance costs for sponsors of qualifying assets if there is no risk retention. Lower costs of securitizing loans may enhance competition in the market for qualifying auto, commercial real estate and commercial loans by allowing more firms to be profitable. While we believe that the qualified standards will result in only a small percentage of securitizations to be exempt from risk retention, we believe that many of these asset classes have existing practices that are consistent with the risk retention requirements that the agencies are adopting today.[477] Further, as discussed elsewhere in this economic analysis, the agencies have made adjustments to other areas of the rule (*e.g.,* CMBS option, horizontal risk retention) to address concerns about the implementation of risk retention to particular asset classes or structures.

a. Blended Pools of Qualifying Assets

The reproposal would permit sponsors to blend pools of qualifying automobile loans, qualifying commercial loans or QCRE loans with non-qualifying assets of the same class to receive up to a 50 percent reduction in the minimum required risk retention amount.

While many sponsor commenters supported the ability to blend pools of qualifying and non-qualifying assets to obtain a reduced risk retention amount, these commenters requested that the agencies remove the 50 percent limit on the reduction for blended pools of commercial, CRE, or automobile loans. Investor commenters, however, generally opposed allowing blended pools of qualifying and non-qualifying assets.

The agencies are adopting the provision as reproposed. Allowing blended pools with a reduced risk retention requirement will improve efficiency, competition and capital formation by allowing sponsors to securitize more loans when it is difficult to obtain a large enough pool of qualifying assets to issue an ABS consisting entirely of exempted assets.

By allowing reduced risk retention on blended pools, sponsors hold less risk retention on lower quality loans than they would otherwise. For example, a sponsor that holds vertical risk retention and that forms of pool of 50 percent non-qualifying loans would be exposed to 2.5 percent of the credit risk of the non-qualifying loans compared to 5 percent if the pool were comprised entirely of non-qualifying loans. Hence, increasing the fraction of qualifying loans into the pool lessens the fraction of credit exposure to the remaining non-qualifying loans. In the extreme, inclusion of 1 percent of non-qualifying loans would result in a sponsor being exposed to only 0.05 percent of the non-qualifying loans. This could erode the disincentives of the originate-to-distribute model that the risk retention requirement was designed to address. In order to ensure sponsors hold a meaningful amount of risk and do not have incentives to underwrite and securitize low quality loans the limit on the reduction of risk retention requirement is 50 percent. Thus, even in the case of a pool of 1 percent non-qualified loans a sponsor would still have to retain 2.5 percent of the credit risk of the pool.

b. Buyback Requirement

Exempting certain type of loans gives sponsors an incentive to misrepresent qualifications of loans, similar to what was observed in the run-up to the financial crisis. However, the final rule requires that, if after issuance of a qualifying asset securitization, it was discovered that a loan did not meet the

[476] Section 15G allocates authority to prescribe the underwriting criteria for qualifying assets to the federal banking agencies, and the SEC is not promulgating this aspect of the final rule. Consequently, the Commission's Economic Analysis does not address this aspect of the final rule. However, see the discussion below for a general discussion of the economic effects of providing an exemption for qualifying assets, as contemplated by Section 15G.

[477] But see discussion of open market CLOs in Section 5.b.vi of this Economic Analysis.

qualifying underwriting criteria, the sponsor would have to repurchase or cure the loan (buyback requirement).

Commenters did not provide any comments on the buyback requirement except for the effect of the provision on CLOs. Some sponsor commenters opposed the buyback provision for CLOs, noting that open market CLO managers are thinly capitalized and generally would not have significant financial resources available to buy back loans in the pools they manage. The agencies are adopting this provision as reproposed.

The benefit of this provision is that it helps to prevent and disincentivize sponsors from trying to include non-qualifying loans in the securitization without representing them as such for the purpose of avoiding risk retention. The buyback provision should increase investors' willingness to invest because it makes sponsors of asset-backed securities responsible for correcting discovered underwriting mistakes and ensures that the actual characteristics of the underlying asset pool conform to the promised characteristics.

c. Qualified Residential Mortgages

The risk to financial markets from poor underwriting practices and inadequate disclosure of risks to investors in the RMBS securitizations is considerable. A body of academic literature has emerged since the financial crisis that supports the view that, during the early to mid-2000s, residential mortgage-backed securitizations (RMBSs) contributed to a significant decline in underwriting standards for residential mortgage loans, particularly in the private label securitization market.[478] During this time, the volume of private label RMBS issuance increased significantly from $343 billion in 2003 to $726 billion in 2005 and $685 billion by 2006.[479] GSE sponsored securitizations fell during this same period. An analysis of historical performance among loans securitized into private-label RMBS that originated between 1997 and 2009 shows that those meeting the QM standard sustained exceedingly high serious delinquency rates, greater than 30 percent during that period.[480]

These high delinquency rates underscore the moral hazard problem described earlier that can arise when disclosures to investors do not provide sufficient detail to adequately evaluate the quality of the loans backing the security. This problem was exacerbated by the fact that the underlying RMBS loan pools were typically comprised of thousands of loans that required time and resources to evaluate, but with key features of the loans not always available to investors in sufficient detail to make those evaluations. The resulting information asymmetry, combined with the originate-to-distribute incentives that allowed sponsors to receive full compensation before investors had the opportunity to learn about loan quality and ultimate risks, generated the conditions that contributed to the financial crisis. It is these conditions that the risk retention rule is designed to address.

The rule the agencies are adopting today exempts from the risk retention requirements any securitization comprised exclusively of QRMs. Section 15G requires that asset-backed securities that are collateralized solely by QRMs be completely exempted from risk retention requirements and allows the agencies to define the terms and conditions under which a residential mortgage would qualify as a QRM. Section 15G mandates that the definition of a QRM be no broader than the definition of a QM, as such term is defined under Section 129C(b)(2) of the Truth in Lending Act.

Pursuant to the statutory mandate, the agencies are exempting securitizations collateralized solely by QRMs and, pursuant to the discretion permitted, are defining QRMs as QMs. As outlined in the reproposal, the Commission believes that this definition of QRM would achieve a number of important benefits. First, since the criteria established by the Consumer Financial Protection Bureau (CFPB) to define QMs focus on underwriting standards, less risky product features, and affordability, the Commission believes that aligning the definition of QRM with QM is likely to promote more prudent lending and contribute to a sustainable, resilient and liquid mortgage securitization market.

Second, the Commission believes that a single mortgage quality standard (as opposed to creating a second mortgage quality standard) would benefit market participants by simplifying the lending and securitization requirements and eligibilities applicable to the residential mortgage and RMBS market. Moreover, having a separate mortgage standard for the exemption from risk retention could impact the relevance of the QM standard, particularly if the definitions were not sufficiently different. For example, if the two standards resulted in qualified mortgages of similar risk, it is possible that sponsors would focus on securitizing only mortgages that met the higher QRM standard because of the exemption from risk retention. If so, this could impact access to capital for creditworthy borrowers who could not secure a QRM, because their loans would be less attractive to securitizers and impact an originator's ability to sell it. Commenters suggested that this would hit middle income and first time borrowers the hardest, and have a detrimental impact to capital formation.

Third, a broad definition of QRM avoids the potential effect of squeezing out certain lenders, such as community banks and credit unions, which may not have sufficient resources to hold the capital associated with the origination of non-QRMs, thus enhancing competition within this segment of the lending market. The Commission believes that a broad QRM definition will increase the ability of these lenders to securitize their mortgage originations and thus increase their ability to generate new loans and facilitate enhanced borrower access to capital.

Finally, a broad definition of QRM may help encourage the re-emergence of private capital in securitization markets. The Enterprises currently have a competitive advantage over private label securitizations because the Enterprises benefit from lower funding costs attributed to the recognition of their explicit Federal capital support, a subsidy to their lending activity that is not available to private label securitizations. Moreover, the Enterprises' current guarantee of their securitizations fulfill the risk retention requirements as long as they are in receivership and conservatorship and meet other conditions, and they would not have the same concomitant costs of complying with the rule as private parties during this time. Hence, the less restrictive QRM criteria should enhance the competitiveness of sponsors of private label securitizations by expanding the scope of loans eligible for securitization without triggering risk retention requirements. This, in turn, would reduce the need for borrowers to rely on programs offered by the Enterprises.

Aligning the definition of QRM to QM incorporates into the definition of QRM certain loan product features that historical performance data indicates

[478] Keys, Mukherjee, Seru and Vig, "Did Securitization Lead to Lax Screening? Evidence from Subprime Loans", Quarterly Journal of Economics, vol. 125, no. 1, pp. 307–362, February 2010 and Nadauld and Sherlund, "The Impact of Securitization on the Expansion of Subprime Credit", Journal of Financial Economics, vol. 107, no. 2, February 2013, pp. 454–476.

[479] Source: SIFMA Statistics available at *http://www.sifma.org/research/statistics.aspx.*

[480] *See* Joshua White and Scott Bauguess, *Qualified Residential Mortgage: Background Data Analysis on Credit Risk Retention,* (August 2013), *available at http://www.sec.gov/divisions/riskfin/whitepapers/qrm-analysis-08-2013.pdf.*

results in a lower risk of default. The Commission thus acknowledges that the QM standard does not fully address the loan underwriting features that are most likely to result in a lower risk of default, including down payment requirements and measures of borrower credit history. The Commission, however, believes that other regulatory developments may provide investors with additional information that allows them to more effectively assess the potential risks underlying securitizations as well as more effective recourse against sponsors when problems arise with the performance of underlying loans. In particular, the Commission has recently adopted revisions to Regulation AB [481] that require in registered RMBS transactions disclosure of detailed loan-level information at the time of issuance and on an ongoing basis. As previously described, for registered offerings covered by the revised Regulation AB, the loan level disclosures should enhance an investor's ability to accurately assess the quality of the underlying assets. The revised Regulation AB also requires issuers to provide investors with this information in sufficient time prior to the first sale of securities so that they can analyze this information when making their investment decision and provides additional transactional safeguards for registered shelf offerings. These regulatory reforms, combined with the prudential underwriting standards embodied in the QM definition, should serve to significantly mitigate the moral hazard problem for registered RMBS securitizations. As previously discussed, private-label securitizations issued through unregistered offerings are not subject to the asset-level requirements under revised Regulation AB.

The Commission is aware that defining QRMs broadly to equate with the definition of QM may result in a number of economic costs. Most notably, sponsors will not be required to retain an economic interest in the credit risk of QRM loans, and thus, there will be less incentivized to avoid the originate-to-distribute model that can contribute to poor quality underwriting and the obfuscation of risk to the ultimate investors in RMBS securitizations. Moreover, although the QRM exemption is based on the premise that well-underwritten mortgages were not the cause of the financial crisis, the criteria for QM loans do not account for all borrower characteristics that may provide additional information about default rates. In particular, QM loans do not account for certain underwriting and product features that historical loan performance indicate lower risk of default. For instance, borrowers' credit history, down payment and loan-to-value ratio have been shown to be significantly associated with lower borrower default rates.[482] This introduces additional risk into securitizations without a risk retention requirement relative to a more narrowly defined QRM definition.

Some commenters indicated that the QM-Plus alternative proposal that included a down payment requirement was unnecessarily restrictive, did not account for compensating factors in underwriting practices, and that the foreclosure crisis was predominantly a result of abusive loan terms and practices that are addressed by the QM definition. The commenters concluded that the QM definition adequately addresses product features that historical loan performance data indicate result in a lower risk of default, that low down payment loans have been used with great success to promote sustainable homeownership, and aligning the definition of QRM to QM strikes the right balance of improved standards and the need to improve access to affordable credit on reasonable terms.

Commenters also questioned the estimated delinquency rates reported in the Commission analysis of historical loan performance among loans packaged by private label securitizations that would have met the current QM definition. These commenters claimed that the SEC staff study included loans with risky features linked to default that would not meet the QM definition, and that the period of analysis of the SEC staff study focused too narrowly on the origination years leading up to the financial crisis, and thus the most poorly underwritten mortgages. As a result, these commenters stated that the 34 percent estimated serious delinquency rate among securitized private label loans found in the SEC staff study did not fairly reflect the effect of the QM definition, which when applied to their broader sample of mortgages (that included GSE purchased loans and non-securitized loans) was 5.8 percent.

The Commission recognizes that estimates of delinquency rates are sensitive to the sample of mortgages analyzed, and in particular, can vary significantly based on the time period and types of loans analyzed. In particular, as previously noted, there is a large difference in the historical performance of GSE purchased loans, for which GSEs' current guarantee fulfills the risk retention requirements as long as GSEs are in receivership and conservatorship and meet other conditions, which effectively currently exempts such loans from risk retention requirements, and securitized private labels loans. The SEC staff study focused on securitized private labels loans to respond to previous commenter concern that the original proposal inappropriately focused on loans purchased by GSEs and thus excluded originations held in non-GSE securitizations. The SEC staff study also focused on the years leading up to the crisis years because this was the period of underwriting abuses for which the presence of a QM definition would have had the most relevance. Moreover, the 34 percent delinquency rate reported in the SEC staff study is consistent with estimates provided in the analysis of another commenter when restricted to the same loan types and period.[483]

As previously discussed, some asymmetric information issues contributing to the moral hazard problem of the originate-to-distribute model are addressed by the revisions to Regulation AB. In particular, while registered RMBS backed by QRM loans are exempt from risk retention, issuers of such securities are required to provide loan-level information for each asset in the underlying pool in accordance with revised Regulation AB. Thus, the moral hazard problem is reduced for these issuances because asset-level disclosure should mitigate the information asymmetry problem to the extent that the disclosures adequately inform investors of the risks.

At present, private label RMBS transactions comprise only a small fraction of the total non-agency asset-backed securities market—6.4 percent by dollar volume in 2013.[484] Moreover, only 16 percent of RMBS were registered issues. This is far below the pre-crisis levels. For example, the issuance volume of private label RMBS securitizations was $801 billion in 2006, which accounted for 39 percent of the total non-agency asset-backed securities issuance in 2006. Of these transactions, only 9.3 percent were privately-issued offerings (*e.g.,* resales under Rule 144A or private placements), transactions that would not be subject to asset-level disclosures by the revised Regulation AB rules. If the private label

[481] See 79 FR 57184.

[482] *See* footnote 481.

[483] Urban Institute, Table 1 reports 36 percent delinquency rate for Private Label Securities originated during the 2006–2008 period.

[484] All figures in this paragraph are calculated by DERA staff using the Asset-Backed Alert and Commercial Mortgage Alert databases.

securitization market were to return to pre-crisis levels and registration practices, then a significant portion of the RMBS market would be subject to asset-level disclosures. For the remaining unregistered offerings, risk retention requirements would still apply and address the potential moral hazard problem to the extent that the underlying securitizations were not comprised of QRMs.

Broadly, by aligning the definition of QRM to QM the agencies are fostering the least restrictive capital formation regime for residential mortgages allowed under the statute. This alignment allows for securitizations exempt from the requirement of risk retention that include loans with low down payment and loans without down payment or borrower credit history requirements. By not adopting these additional credit overlays, the agencies have sought to facilitate the ability of mortgage originators to have sponsors package their loans into securitizations and thereby generate new capital for the continued origination of new mortgages. In the near term, under prevailing tight mortgage lending conditions, this definition is intended to promote borrower access to capital, especially for low-and moderate income, minority and first-time home buyers, and accelerate the recovery of the private label RMBS market.

However, aligning the definition of QRM to QM also provides the least restrictive regulatory measure available under the statute to mitigate the reemergence of the moral hazard problem in the RMBS market. By exempting from the risk retention requirement securitizations comprised of loans with characteristics that historically have been indicators of a higher probability of mortgage default, the same economic incentives for the originate-to-distribute model that existed prior to the onset of the financial crisis may persist.

Hence the alignment of the definition of the two mortgage standards involves a tradeoff between, on the one hand, promoting financial market recovery and borrower access to capital, and, on the other hand, adding additional credit requirements that may lessen the likelihood of future moral hazards related to the lending practices in the housing market but also further constrain mortgage credit. The agencies have sought to address this tradeoff through the introduction of a periodic review of the QRM definition that allows the agencies to monitor the rule's effects as the RMBS market evolves in the new regulatory environment. The agencies will review the QRM definition at regular intervals and in response to any changes made to the QM definition by the CFPB, and as a result of these reviews, may or may not decide to modify the definition of QRM through notice and comment rulemaking. Moreover, the agencies will commence a review at any time upon the request of any one of the agencies. By including this review process in the final rule, the agencies recognize that prevailing market conditions could change in a way that merits a stricter definition of QRM, and have introduced a process by which the alignment of QRM to QM can be assessed going forward.

d. Mortgage Loans Exempt From QM

The agencies are also adopting an exemption from risk retention for securitizations of loans originated through community-focused lending programs that are currently exempt from the CFPB's ability-to-repay requirements and an exemption for certain three-to-four unit mortgage loans.

Exempting securitizations of loans originated through community-focused lending programs that are currently exempt from the CFPB's ability-to-repay requirements from risk retention will increase capital formation. The mission of many of these community-based lenders is to provide access to capital for underserved communities; requiring risk retention for them would impose a cost that might impinge on their ability to make loans or might increase their cost of capital. The borrowers that rely on community based lenders may also avoid higher borrowing costs as the result of this exemption. Efficiency may be improved to the extent community based underwriters have more information about their borrowers than other lenders and use soft information to underwrite their loans.[485] We acknowledge, however, that underwriting standards may change allowing lower quality loans to be securitized. The exemption for these loans, as with QRM, however, will be subject to periodic review by the agencies.

The agencies are also providing an exemption from the risk retention requirements for certain mortgage loans secured by three-to-four unit residential properties that meet the criteria for QM other than being a consumer credit transaction, as well as an exemption to permit sponsors to securitize these exempted mortgage loans with QRMs. The exemption for these loans, as with QRM, will be subject to periodic review by the agencies.

Even though three-to-four unit mortgages comprise a relatively small fraction of the one-to-four residential mortgage market, exempting securitizations of such loans from risk retention could increase access to capital for these borrowers. Among loans acquired or guaranteed by Fannie Mae (Freddie Mac) between 2000 and 2013, only 0.93 percent (0.70 percent) of loans by initial balance were three-to-four unit mortgages, and the total principal balance of such mortgages acquired or guaranteed by the Enterprises exceeded $56 billion. Three-to-four unit mortgages were slightly more prominent in the private-label securitization market, for which 1.51 percent of loans by initial balance were three-to-four unit mortgages, with the total original principal balance of almost $23 billion.[486]

Currently, the Enterprises' guarantee is an acceptable form of risk retention as long as they are in receivership or conservatorship and meet other conditions. Thus, under current conditions, three-to-four unit mortgages guaranteed by the Enterprises can be securitized without having to comply with the risk retention requirements. However, without the exemption, should the Enterprises in the future no longer be in receivership or conservatorship, these three-to-four unit mortgages would be subject to the risk retention requirements even if they otherwise met the QM criteria. The exemption will allow such mortgages to continue to be securitized with two unit mortgages, as has been historical practice, regardless of the legal status of the Enterprises and provided that all of the loans in the pool meet the QM criteria. In this way, the exemption will help to facilitate continued access to capital for borrowers of three-to-four unit mortgages.

Based on historical data, three-to-four unit residential mortgages that otherwise satisfy the QM criteria exhibit comparable or lower delinquency rates as QM two unit residential mortgages. The average serious delinquency rate[487]

[485] *See, e.g.,* O.E. Ergungor, ''Bank Branch Presence and Access to Credit in Low- to Moderate-Income Neighborhoods'' Journal of Money, Credit, and Banking, 2010; S. Agrawal, B. Ambrose, S. Chomsisengphet, and C. Liu, ''The role of Soft Information in a Dynamic Contract Setting: Evidence from the Home Equity Credit Market,'' Journal of Money Credit and Banking, 2011; C. Chang, G. Liao, Z. Yu, Z. Ni, ''Information From Relationship Lending: Evidence from Loan Defaults in China,'' working paper, 2010.

[486] DERA staff calculations based on MBSData dataset. The dataset provides data for the number of units for 31.3 percent of the loans securitized privately between 2000 and 2012.

[487] Serious delinquency (SDQ) is defined as a loan having ever been 90 days late, foreclosed, or real estate owned.

among such three-to-four unit mortgages securitized through private-label securitizations in 2000–2009 was 36 percent, whereas among two unit mortgages it was 41 percent. Moreover, the difference in delinquency rates are not statistically different when controlling for other factors known to influence delinquency rates like credit score, loan-to-value ratio, debt-to-income ratio, etc.[488] These results indicate that historical three-to-four unit residential mortgage delinquency rates are no higher than those of two unit residential mortgages, and thus do not provide any evidence that exempting such mortgages from risk retention would introduce additional risk into securitizations that would include such loans. The Commission believes that this equivalent performance is likely to continue after the implementation of this exemption because both two unit and three-to-four unit mortgages would be required to satisfy the same QM underwriting criteria.

D. OCC Unfunded Mandates Reform Act of 1995 Determination

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more, adjusted for inflation ($152 million in 2014) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined this final rule is likely to result in the expenditure by the private sector of $152 million or more in any one year. The OCC has prepared a budgetary impact analysis and identified and considered alternative approaches, including approaches suggested by commenters and discussed in the **SUPPLEMENTARY INFORMATION** section above. When the final rule is published in the **Federal Register**, the full text of the OCC's analysis will be available at: *http://www.regulations.gov*, Docket ID OCC–2013–0010.

E. FHFA: Considerations of Differences Between the Federal Home Loan Banks and the Enterprises

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 (Banks), to consider the following differences between the Banks and the Enterprises (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.[489] The Director also may consider any other differences that are deemed appropriate. In preparing the portions of this final rule over which FHFA has joint rulemaking authority, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that the rule was appropriate. No comments were received on the reproposed rule with respect to this issue.

Text of the Common Rule

(All Agencies)

The text of the common rule appears below:

PART __—CREDIT RISK RETENTION

Subpart A—Authority, Purpose, Scope and Definitions

Subpart A—Authority, Purpose, Scope and Definitions

§ __.1 [Reserved]

§ __.2 Definitions.

For purposes of this part, the following definitions apply:

ABS interest means:

(1) Any type of interest or obligation issued by an issuing entity, whether or not in certificated form, including a security, obligation, beneficial interest or residual interest (other than an uncertificated regular interest in a REMIC that is held by another REMIC, where both REMICs are part of the same structure and a single REMIC in that structure issues ABS interests to investors, or a non-economic residual interest issued by a REMIC), payments on which are primarily dependent on the cash flows of the collateral owned or held by the issuing entity; and

(2) Does not include common or preferred stock, limited liability interests, partnership interests, trust certificates, or similar interests that:

(i) Are issued primarily to evidence ownership of the issuing entity; and

(ii) The payments, if any, on which are not primarily dependent on the cash flows of the collateral held by the issuing entity; and

(3) Does not include the right to receive payments for services provided by the holder of such right, including servicing, trustee services and custodial services.

Affiliate of, or a person *affiliated* with, a specified person means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Appropriate Federal banking agency has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

[488] Specifically, DERA staff ran the predictive logit regression from the White and Bauguess (2013) study (see footnote 446) for privately securitized 2, 3, and 4 unit mortgages in the MBSData database satisfying QM criteria and originated over the period 2000–2009. Adding an indicator variable marking three-to-four unit residential mortgages does not generate a statistically significant coefficient estimate, and does not improve the regression's goodness-of-fit measure (pseudo-R-squared).

[489] *See* 12 U.S.C. 4513.

Asset means a self-liquidating financial asset (including but not limited to a loan, lease, mortgage, or receivable).

Asset-backed security has the same meaning as in section 3(a)(79) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(79)).

Collateral means, with respect to any issuance of ABS interests, the assets that provide the cash flow and the servicing assets that support such cash flow for the ABS interests irrespective of the legal structure of issuance, including security interests in assets or other property of the issuing entity, fractional undivided property interests in the assets or other property of the issuing entity, or any other property interest in or rights to cash flow from such assets and related servicing assets. Assets or other property *collateralize* an issuance of ABS interests if the assets or property serve as collateral for such issuance.

Commercial real estate loan has the same meaning as in § __.14.

Commission means the Securities and Exchange Commission.

Control including the terms ''controlling,'' ''controlled by'' and ''under common control with'':

(1) Means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(2) Without limiting the foregoing, a person shall be considered to control another person if the first person:

(i) Owns, controls or holds with power to vote 25 percent or more of any class of voting securities of the other person; or

(ii) Controls in any manner the election of a majority of the directors, trustees or persons performing similar functions of the other person.

Credit risk means:

(1) The risk of loss that could result from the failure of the borrower in the case of a securitized asset, or the issuing entity in the case of an ABS interest in the issuing entity, to make required payments of principal or interest on the asset or ABS interest on a timely basis;

(2) The risk of loss that could result from bankruptcy, insolvency, or a similar proceeding with respect to the borrower or issuing entity, as appropriate; or

(3) The effect that significant changes in the underlying credit quality of the asset or ABS interest may have on the market value of the asset or ABS interest.

Creditor has the same meaning as in 15 U.S.C. 1602(g).

Depositor means:

(1) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity;

(2) The sponsor, in the case of a securitization transaction where there is not an intermediate transfer of the assets from the sponsor to the issuing entity; or

(3) The person that receives or purchases and transfers or sells the securitized assets to the issuing entity in the case of a securitization transaction where the person transferring or selling the securitized assets directly to the issuing entity is itself a trust.

Eligible horizontal residual interest means, with respect to any securitization transaction, an ABS interest in the issuing entity:

(1) That is an interest in a single class or multiple classes in the issuing entity, provided that each interest meets, individually or in the aggregate, all of the requirements of this definition;

(2) With respect to which, on any payment date or allocation date on which the issuing entity has insufficient funds to satisfy its obligation to pay all contractual interest or principal due, any resulting shortfall will reduce amounts payable to the eligible horizontal residual interest prior to any reduction in the amounts payable to any other ABS interest, whether through loss allocation, operation of the priority of payments, or any other governing contractual provision (until the amount of such ABS interest is reduced to zero); and

(3) That, with the exception of any non-economic REMIC residual interest, has the most subordinated claim to payments of both principal and interest by the issuing entity.

Eligible horizontal cash reserve account means an account meeting the requirements of § __.4(b).

Eligible vertical interest means, with respect to any securitization transaction, a single vertical security or an interest in each class of ABS interests in the issuing entity issued as part of the securitization transaction that constitutes the same proportion of each such class.

Federal banking agencies means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

GAAP means generally accepted accounting principles as used in the United States.

Issuing entity means, with respect to a securitization transaction, the trust or other entity:

(1) That owns or holds the pool of assets to be securitized; and

(2) In whose name the asset-backed securities are issued.

Majority-owned affiliate of a person means an entity (other than the issuing entity) that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, such person. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Originator means a person who:

(1) Through an extension of credit or otherwise, creates an asset that collateralizes an asset-backed security; and

(2) Sells the asset directly or indirectly to a securitizer or issuing entity.

REMIC has the same meaning as in 26 U.S.C. 860D.

Residential mortgage means:

(1) A transaction that is a covered transaction as defined in § 1026.43(b) of Regulation Z (12 CFR 1026.43(b)(1));

(2) Any transaction that is exempt from the definition of ''covered transaction'' under § 1026.43(a) of Regulation Z (12 CFR 1026.43(a)); and

(3) Any other loan secured by a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium or cooperative unit and, if used as a residence, a mobile home or trailer.

Retaining sponsor means, with respect to a securitization transaction, the sponsor that has retained or caused to be retained an economic interest in the credit risk of the securitized assets pursuant to subpart B of this part.

Securitization transaction means a transaction involving the offer and sale of asset-backed securities by an issuing entity.

Securitized asset means an asset that:

(1) Is transferred, sold, or conveyed to an issuing entity; and

(2) Collateralizes the ABS interests issued by the issuing entity.

Securitizer means, with respect to a securitization transaction, either:

(1) The depositor of the asset-backed securities (if the depositor is not the sponsor); or

(2) The sponsor of the asset-backed securities.

Servicer means any person responsible for the management or collection of the securitized assets or making allocations or distributions to holders of the ABS interests, but does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the ABS interests if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer.

Servicing assets means rights or other assets designed to assure the servicing or timely distribution of proceeds to ABS interest holders and rights or other assets that are related or incidental to purchasing or otherwise acquiring and holding the issuing entity's securitized assets. Servicing assets include amounts received by the issuing entity as proceeds of securitized assets, including proceeds of rights or other assets, whether as remittances by obligors or as other recoveries.

Single vertical security means, with respect to any securitization transaction, an ABS interest entitling the sponsor to a specified percentage of the amounts paid on each class of ABS interests in the issuing entity (other than such single vertical security).

Sponsor means a person who organizes and initiates a securitization transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity.

State has the same meaning as in Section 3(a)(16) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(16)).

United States or U.S. means the United States of America, including its territories and possessions, any State of the United States, and the District of Columbia.

Wholly-owned affiliate means a person (other than an issuing entity) that, directly or indirectly, wholly controls, is wholly controlled by, or is wholly under common control with, another person. For purposes of this definition, ''wholly controls'' means ownership of 100 percent of the equity of an entity.

Subpart B—Credit Risk Retention

§ _.3 Base risk retention requirement.

(a) *Base risk retention requirement.* Except as otherwise provided in this part, the sponsor of a securitization transaction (or majority-owned affiliate of the sponsor) shall retain an economic interest in the credit risk of the securitized assets in accordance with any one of §§ _.4 through __.10. Credit risk in securitized assets required to be retained and held by any person for purposes of compliance with this part, whether a sponsor, an originator, an originator-seller, or a third-party purchaser, except as otherwise provided in this part, may be acquired and held by any of such person's majority-owned affiliates (other than an issuing entity).

(b) *Multiple sponsors.* If there is more than one sponsor of a securitization transaction, it shall be the responsibility of each sponsor to ensure that at least one of the sponsors of the securitization transaction (or at least one of their majority-owned or wholly-owned affiliates, as applicable) retains an economic interest in the credit risk of the securitized assets in accordance with any one of §§ __.4, _.5, _.8, __.9, or _.10.

§ _.4 Standard risk retention.

(a) *General requirement.* Except as provided in §§ __.5 through __.10, the sponsor of a securitization transaction must retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of this section.

(1) If the sponsor retains only an eligible vertical interest as its required risk retention, the sponsor must retain an eligible vertical interest in a percentage of not less than 5 percent.

(2) If the sponsor retains only an eligible horizontal residual interest as its required risk retention, the amount of the interest must equal at least 5 percent of the fair value of all ABS interests in the issuing entity issued as a part of the securitization transaction, determined using a fair value measurement framework under GAAP.

(3) If the sponsor retains both an eligible vertical interest and an eligible horizontal residual interest as its required risk retention, the percentage of the fair value of the eligible horizontal residual interest and the percentage of the eligible vertical interest must equal at least five.

(4) The percentage of the eligible vertical interest, eligible horizontal residual interest, or combination thereof retained by the sponsor must be determined as of the closing date of the securitization transaction.

(b) *Option to hold base amount in eligible horizontal cash reserve account.* In lieu of retaining all or any part of an eligible horizontal residual interest under paragraph (a) of this section, the sponsor may, at closing of the securitization transaction, cause to be established and funded, in cash, an eligible horizontal cash reserve account in the amount equal to the fair value of such eligible horizontal residual interest or part thereof, provided that the account meets all of the following conditions:

(1) The account is held by the trustee (or person performing similar functions) in the name and for the benefit of the issuing entity;

(2) Amounts in the account are invested only in cash and cash equivalents; and

(3) Until all ABS interests in the issuing entity are paid in full, or the issuing entity is dissolved:

(i) Amounts in the account shall be released only to:

(A) Satisfy payments on ABS interests in the issuing entity on any payment date on which the issuing entity has insufficient funds from any source to satisfy an amount due on any ABS interest; or

(B) Pay critical expenses of the trust unrelated to credit risk on any payment date on which the issuing entity has insufficient funds from any source to pay such expenses and:

(*1*) Such expenses, in the absence of available funds in the eligible horizontal cash reserve account, would be paid prior to any payments to holders of ABS interests; and

(*2*) Such payments are made to parties that are not affiliated with the sponsor; and

(ii) Interest (or other earnings) on investments made in accordance with paragraph (b)(2) of this section may be released once received by the account.

(c) *Disclosures.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors, under the caption ''Credit Risk Retention'', a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction the following disclosures in written form and within the time frames set forth in this paragraph (c):

(1) *Horizontal interest.* With respect to any eligible horizontal residual interest held under paragraph (a) of this section, a sponsor must disclose:

(i) A reasonable period of time prior to the sale of an asset-backed security issued in the same offering of ABS interests,

(A) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor expects to retain at the closing of the securitization transaction. If the specific prices, sizes, or rates of interest of each tranche of the securitization are not available, the sponsor must disclose a range of fair values (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor expects to retain at the close of the securitization transaction based on a range of bona fide estimates or specified prices, sizes, or rates of interest of each tranche of the securitization. A sponsor disclosing a range of fair values based on a range of bona fide estimates or specified prices, sizes or rates of interest of each tranche of the securitization must also disclose the method by which it determined any range of prices, tranche sizes, or rates of interest.

(B) A description of the material terms of the eligible horizontal residual interest to be retained by the sponsor;

(C) A description of the valuation methodology used to calculate the fair values or range of fair values of all classes of ABS interests, including any portion of the eligible horizontal residual interest retained by the sponsor;

(D) All key inputs and assumptions or a comprehensive description of such key inputs and assumptions that were used in measuring the estimated total fair value or range of fair values of all classes of ABS interests, including the eligible horizontal residual interest to be retained by the sponsor.

(E) To the extent applicable to the valuation methodology used, the disclosure required in paragraph (c)(1)(i)(D) of this section shall include, but should not be limited to, quantitative information about each of the following:

(*1*) Discount rates;

(*2*) Loss given default (recovery);

(*3*) Prepayment rates;

(*4*) Default rates;

(*5*) Lag time between default and recovery; and

(*6*) The basis of forward interest rates used.

(F) The disclosure required in paragraphs (c)(1)(i)(C) and (D) of this section shall include, at a minimum, descriptions of all inputs and assumptions that either could have a material impact on the fair value calculation or would be material to a prospective investor's ability to evaluate the sponsor's fair value calculations. To the extent the disclosure required in this paragraph (c)(1) includes a description of a curve or curves, the description shall include a description of the methodology that was used to derive each curve and a description of any aspects or features of each curve that could materially impact the fair value calculation or the ability of a prospective investor to evaluate the sponsor's fair value calculation. To the extent a sponsor uses information about the securitized assets in its calculation of fair value, such information shall not be as of a date more than 60 days prior to the date of first use with investors; provided that for a subsequent issuance of ABS interests by the same issuing entity with the same sponsor for which the securitization transaction distributes amounts to investors on a quarterly or less frequent basis, such information shall not be as of a date more than 135 days prior to the date of first use with investors; provided further, that the balance or value (in accordance with the transaction documents) of the securitized assets may be increased or decreased to reflect anticipated additions or removals of assets the sponsor makes or expects to make between the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security and the closing date of the securitization.

(G) A summary description of the reference data set or other historical information used to develop the key inputs and assumptions referenced in paragraph (c)(1)(i)(D) of this section, including loss given default and default rates;

(ii) A reasonable time after the closing of the securitization transaction:

(A) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest the sponsor retained at the closing of the securitization transaction, based on actual sale prices and finalized tranche sizes;

(B) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to retain under this section; and

(C) To the extent the valuation methodology or any of the key inputs and assumptions that were used in calculating the fair value or range of fair values disclosed prior to sale and required under paragraph (c)(1)(i) of this section materially differs from the methodology or key inputs and assumptions used to calculate the fair value at the time of closing, descriptions of those material differences.

(iii) If the sponsor retains risk through the funding of an eligible horizontal cash reserve account:

(A) The amount to be placed (or that is placed) by the sponsor in the eligible horizontal cash reserve account at closing, and the fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that the sponsor is required to fund through the eligible horizontal cash reserve account in order for such account, together with other retained interests, to satisfy the sponsor's risk retention requirement;

(B) A description of the material terms of the eligible horizontal cash reserve account; and

(C) The disclosures required in paragraphs (c)(1)(i) and (ii) of this section.

(2) *Vertical interest.* With respect to any eligible vertical interest retained under paragraph (a) of this section, the sponsor must disclose:

(i) A reasonable period of time prior to the sale of an asset-backed security issued in the same offering of ABS interests,

(A) The form of the eligible vertical interest;

(B) The percentage that the sponsor is required to retain as a vertical interest under this section; and

(C) A description of the material terms of the vertical interest and the amount that the sponsor expects to retain at the closing of the securitization transaction.

(ii) A reasonable time after the closing of the securitization transaction, the amount of the vertical interest the sponsor retained at closing, if that amount is materially different from the amount disclosed under paragraph (c)(2)(i) of this section.

(d) *Record maintenance.* A sponsor must retain the certifications and disclosures required in paragraphs (a) and (c) of this section in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

§ __.5 Revolving pool securitizations.

(a) *Definitions.* For purposes of this section, the following definitions apply:

Revolving pool securitization means an issuing entity that is established to issue on multiple issuance dates more than one series, class, subclass, or tranche of asset-backed securities that are collateralized by a common pool of securitized assets that will change in composition over time, and that does not monetize excess interest and fees from its securitized assets.

Seller's interest means an ABS interest or ABS interests:

(1) Collateralized by the securitized assets and servicing assets owned or held by the issuing entity, other than the following that are not considered a component of seller's interest:

(i) Servicing assets that have been allocated as collateral only for a specific series in connection with administering the revolving pool securitization, such as a principal accumulation or interest reserve account; and

(ii) Assets that are not eligible under the terms of the securitization transaction to be included when determining whether the revolving pool securitization holds aggregate securitized assets in specified proportions to aggregate outstanding investor ABS interests issued; and

(2) That is *pari passu* with each series of investor ABS interests issued, or partially or fully subordinated to one or more series in identical or varying amounts, with respect to the allocation of all distributions and losses with respect to the securitized assets prior to early amortization of the revolving securitization (as specified in the securitization transaction documents); and

(3) That adjusts for fluctuations in the outstanding principal balance of the securitized assets in the pool.

(b) *General requirement.* A sponsor satisfies the risk retention requirements of § __.3 with respect to a securitization transaction for which the issuing entity is a revolving pool securitization if the sponsor maintains a seller's interest of not less than 5 percent of the aggregate unpaid principal balance of all outstanding investor ABS interests in the issuing entity.

(c) *Measuring the seller's interest.* In measuring the seller's interest for purposes of meeting the requirements of paragraph (b) of this section:

(1) The unpaid principal balance of the securitized assets for the numerator of the 5 percent ratio shall not include assets of the types excluded from the definition of seller's interest in paragraph (a) of this section;

(2) The aggregate unpaid principal balance of outstanding investor ABS interests in the denominator of the 5 percent ratio may be reduced by the amount of funds held in a segregated principal accumulation account for the repayment of outstanding investor ABS interests, if:

(i) The terms of the securitization transaction documents prevent funds in the principal accumulation account from being applied for any purpose other than the repayment of the unpaid principal of outstanding investor ABS interests; and

(ii) Funds in that account are invested only in the types of assets in which funds held in an eligible horizontal cash reserve account pursuant to § __.4 are permitted to be invested;

(3) If the terms of the securitization transaction documents set minimum required seller's interest as a proportion of the unpaid principal balance of outstanding investor ABS interests for one or more series issued, rather than as a proportion of the aggregate outstanding investor ABS interests in all outstanding series combined, the percentage of the seller's interest for each such series must, when combined with the percentage of any minimum seller's interest set by reference to the aggregate outstanding investor ABS interests, equal at least 5 percent;

(4) The 5 percent test must be determined and satisfied at the closing of each issuance of ABS interests to investors by the issuing entity, and

(i) At least monthly at a seller's interest measurement date specified under the securitization transaction documents, until no ABS interest in the issuing entity is held by any person not a wholly-owned affiliate of the sponsor; or

(ii) If the revolving pool securitization fails to meet the 5 percent test as of any date described in paragraph (c)(4)(i) of this section, and the securitization transaction documents specify a cure period, the 5 percent test must be determined and satisfied within the earlier of the cure period, or one month after the date described in paragraph (c)(4)(i).

(d) *Measuring outstanding investor ABS interests.* In measuring the amount of outstanding investor ABS interests for purposes of this section, ABS interests held for the life of such ABS interests by the sponsor or its wholly-owned affiliates may be excluded.

(e) *Holding and retention of the seller's interest; legacy trusts.*

(1) Notwithstanding § __.12(a), the seller's interest, and any offsetting horizontal retention interest retained pursuant to paragraph (g) of this section, must be retained by the sponsor or by one or more wholly-owned affiliates of the sponsor, including one or more depositors of the revolving pool securitization.

(2) If one revolving pool securitization issues collateral certificates representing a beneficial interest in all or a portion of the securitized assets held by that securitization to another revolving pool securitization, which in turn issues ABS interests for which the collateral certificates are all or a portion of the securitized assets, a sponsor may satisfy the requirements of paragraphs (b) and (c) of this section by retaining the seller's interest for the assets represented by the collateral certificates through either of the revolving pool securitizations, so long as both revolving pool securitizations are retained at the direction of the same sponsor or its wholly-owned affiliates.

(3) If the sponsor retains the seller's interest associated with the collateral certificates at the level of the revolving pool securitization that issues those collateral certificates, the proportion of the seller's interest required by paragraph (b) of this section retained at that level must equal the proportion that the principal balance of the securitized assets represented by the collateral certificates bears to the principal balance of the securitized assets in the revolving pool securitization that issues the ABS interests, as of each measurement date required by paragraph (c) of this section.

(f) *Offset for pool-level excess funding account.* The 5 percent seller's interest required on each measurement date by paragraph (c) of this section may be reduced on a dollar-for-dollar basis by the balance, as of such date, of an excess funding account in the form of a segregated account that:

(1) Is funded in the event of a failure to meet the minimum seller's interest requirements or other requirement to maintain a minimum balance of securitized assets under the securitization transaction documents by distributions otherwise payable to the holder of the seller's interest;

(2) Is invested only in the types of assets in which funds held in a horizontal cash reserve account pursuant to § __.4 are permitted to be invested; and

(3) In the event of an early amortization, makes payments of amounts held in the account to holders of investor ABS interests in the same manner as payments to holders of investor ABS interests of amounts received on securitized assets.

(g) *Combined seller's interests and horizontal interest retention.* The 5 percent seller's interest required on each measurement date by paragraph (c) of this section may be reduced to a percentage lower than 5 percent to the extent that, for all series of investor ABS interests issued after the applicable effective date of this § __.5, the sponsor, or notwithstanding § __.12(a) a wholly-owned affiliate of the sponsor, retains, at a minimum, a corresponding percentage of the fair value of ABS interests issued in each series, in the form of one or more of the horizontal residual interests meeting the requirements of paragraphs (h) or (i).

(h) *Residual ABS interests in excess interest and fees.* The sponsor may take the offset described in paragraph (g) of this section for a residual ABS interest in excess interest and fees, whether certificated or uncertificated, in a single or multiple classes, subclasses, or tranches, that meets, individually or in the aggregate, the requirements of this paragraph (h);

(1) Each series of the revolving pool securitization distinguishes between the series' share of the interest and fee cash flows and the series' share of the principal repayment cash flows from the securitized assets collateralizing the revolving pool securitization, which may according to the terms of the securitization transaction documents, include not only the series' ratable share of such cash flows but also excess cash flows available from other series;

(2) The residual ABS interest's claim to any part of the series' share of the interest and fee cash flows for any interest payment period is subordinated to all accrued and payable interest due on the payment date to more senior ABS interests in the series for that period, and further reduced by the series' share of losses, including defaults on principal of the securitized assets collateralizing the revolving pool securitization (whether incurred in that period or carried over from prior periods) to the extent that such payments would have been included in amounts payable to more senior interests in the series;

(3) The revolving pool securitization continues to revolve, with one or more series, classes, subclasses, or tranches of asset-backed securities that are collateralized by a common pool of assets that change in composition over time; and

(4) For purposes of taking the offset described in paragraph (g) of this section, the sponsor determines the fair value of the residual ABS interest in excess interest and fees, and the fair value of the series of outstanding investor ABS interests to which it is subordinated and supports using the fair value measurement framework under GAAP, as of:

(i) The closing of the securitization transaction issuing the supported ABS interests; and

(ii) The seller's interest measurement dates described in paragraph (c)(4) of this section, except that for these periodic determinations the sponsor must update the fair value of the residual ABS interest in excess interest and fees for the numerator of the percentage ratio, but may at the sponsor's option continue to use the fair values determined in (h)(4)(i) for the outstanding investor ABS interests in the denominator.

(i) *Offsetting eligible horizontal residual interest.* The sponsor may take the offset described in paragraph (g) of this section for ABS interests that would meet the definition of eligible horizontal residual interests in § __.2 but for the sponsor's simultaneous holding of subordinated seller's interests, residual ABS interests in excess interests and fees, or a combination of the two, if:

(1) The sponsor complies with all requirements of paragraphs (b) through (e) of this section for its holdings of subordinated seller's interest, and paragraph (h) for its holdings of residual ABS interests in excess interests and fees, as applicable;

(2) For purposes of taking the offset described in paragraph (g) of this section, the sponsor determines the fair value of the eligible horizontal residual interest as a percentage of the fair value of the outstanding investor ABS interests in the series supported by the eligible horizontal residual interest, determined using the fair value measurement framework under GAAP:

(i) As of the closing of the securitization transaction issuing the supported ABS interests; and

(ii) Without including in the numerator of the percentage ratio any fair value based on:

(A) The subordinated seller's interest or residual ABS interest in excess interest and fees;

(B) the interest payable to the sponsor on the eligible horizontal residual interest, if the sponsor is including the value of residual ABS interest in excess interest and fees pursuant to paragraph (h) of this section in taking the offset in paragraph (g) of this section; and,

(C) the principal payable to the sponsor on the eligible horizontal residual interest, if the sponsor is including the value of the seller's interest pursuant to paragraphs (b) through (f) of this section and distributions on that seller's interest are available to reduce charge-offs that would otherwise be allocated to reduce principal payable to the offset eligible horizontal residual interest.

(j) *Specified dates.* A sponsor using data about the revolving pool securitization's collateral, or ABS interests previously issued, to determine the closing-date percentage of a seller's interest, residual ABS interest in excess interest and fees, or eligible horizontal residual interest pursuant to this § __.5 may use such data prepared as of specified dates if:

(1) The sponsor describes the specified dates in the disclosures required by paragraph (k) of this section; and

(2) The dates are no more than 60 days prior to the date of first use with investors of disclosures required for the interest by paragraph (k) of this section, or for revolving pool securitizations that make distributions to investors on a quarterly or less frequent basis, no more than 135 days prior to the date of first use with investors of such disclosures.

(k) *Disclosure and record maintenance.* (1) *Disclosure.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors, under the caption ''Credit Risk Retention'' the following disclosure in written form and within the time frames set forth in this paragraph (k):

(i) A reasonable period of time prior to the sale of an asset-backed security, a description of the material terms of the seller's interest, and the percentage of the seller's interest that the sponsor expects to retain at the closing of the securitization transaction, measured in accordance with the requirements of this § __.5, as a percentage of the aggregate unpaid principal balance of all outstanding investor ABS interests issued, or as a percentage of the aggregate unpaid principal balance of outstanding investor ABS interests for one or more series issued, as required by the terms of the securitization transaction;

(ii) A reasonable time after the closing of the securitization transaction, the amount of seller's interest the sponsor retained at closing, if that amount is materially different from the amount disclosed under paragraph (k)(1)(i) of this section; and

(iii) A description of the material terms of any horizontal residual interests offsetting the seller's interest in accordance with paragraphs (g), (h), and (i) of this section; and

(iv) Disclosure of the fair value of those horizontal residual interests retained by the sponsor for the series being offered to investors and described in the disclosures, as a percentage of the fair value of the outstanding investor ABS interests issued, described in the same manner and within the same timeframes required for disclosure of the fair values of eligible horizontal residual interests specified in § __.4(c).

(2) *Adjusted data.* Disclosures required by this paragraph (k) to be made a reasonable period of time prior to the sale of an asset-backed security of the amount of seller's interest, residual ABS interest in excess interest and fees,

or eligible horizontal residual interest may include adjustments to the amount of securitized assets for additions or removals the sponsor expects to make before the closing date and adjustments to the amount of outstanding investor ABS interests for expected increases and decreases of those interests under the control of the sponsor.

(3) *Record maintenance.* A sponsor must retain the disclosures required in paragraph (k)(1) of this section in its records and must provide the disclosure upon request to the Commission and its appropriate Federal banking agency, if any, until three years after all ABS interests are no longer outstanding.

(l) *Early amortization of all outstanding series.* A sponsor that organizes a revolving pool securitization that relies on this § __.5 to satisfy the risk retention requirements of § __.3, does not violate the requirements of this part if its seller's interest falls below the level required by § __. 5 after the revolving pool securitization commences early amortization, pursuant to the terms of the securitization transaction documents, of all series of outstanding investor ABS interests, if:

(1) The sponsor was in full compliance with the requirements of this section on all measurement dates specified in paragraph (c) of this section prior to the commencement of early amortization;

(2) The terms of the seller's interest continue to make it *pari passu* with or subordinate in identical or varying amounts to each series of outstanding investor ABS interests issued with respect to the allocation of all distributions and losses with respect to the securitized assets;

(3) The terms of any horizontal interest relied upon by the sponsor pursuant to paragraph (g) to offset the minimum seller's interest amount continue to require the interests to absorb losses in accordance with the terms of paragraph (h) or (i) of this section, as applicable; and

(4) The revolving pool securitization issues no additional ABS interests after early amortization is initiated to any person not a wholly-owned affiliate of the sponsor, either at the time of issuance or during the amortization period.

§ ___.6 Eligible ABCP conduits.

(a) *Definitions.* For purposes of this section, the following additional definitions apply:

100 percent liquidity coverage means an amount equal to the outstanding balance of all ABCP issued by the conduit plus any accrued and unpaid interest without regard to the performance of the ABS interests held by the ABCP conduit and without regard to any credit enhancement.

ABCP means asset-backed commercial paper that has a maturity at the time of issuance not exceeding 397 days, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

ABCP conduit means an issuing entity with respect to ABCP.

Eligible ABCP conduit means an ABCP conduit, *provided that:*

(1) The ABCP conduit is bankruptcy remote or otherwise isolated for insolvency purposes from the sponsor of the ABCP conduit and from any intermediate SPV;

(2) The ABS interests acquired by the ABCP conduit are:

(i) ABS interests collateralized solely by assets originated by an originator-seller and by servicing assets;

(ii) Special units of beneficial interest (or similar ABS interests) in a trust or special purpose vehicle that retains legal title to leased property underlying leases originated by an originator-seller that were transferred to an intermediate SPV in connection with a securitization collateralized solely by such leases and by servicing assets;

(iii) ABS interests in a revolving pool securitization collateralized solely by assets originated by an originator-seller and by servicing assets; or

(iv) ABS interests described in paragraph (2)(i), (ii), or (iii) of this definition that are collateralized, in whole or in part, by assets acquired by an originator-seller in a business combination that qualifies for business combination accounting under GAAP, and, if collateralized in part, the remainder of such assets are assets described in paragraph (2)(i), (ii), or (iii) of this definition; and

(v) Acquired by the ABCP conduit in an initial issuance by or on behalf of an intermediate SPV:

(A) Directly from the intermediate SPV,

(B) From an underwriter of the ABS interests issued by the intermediate SPV, or

(C) From another person who acquired the ABS interests directly from the intermediate SPV;

(3) The ABCP conduit is collateralized solely by ABS interests acquired from intermediate SPVs as described in paragraph (2) of this definition and servicing assets; and

(4) A regulated liquidity provider has entered into a legally binding commitment to provide 100 percent liquidity coverage (in the form of a lending facility, an asset purchase agreement, a repurchase agreement, or other similar arrangement) to all the ABCP issued by the ABCP conduit by lending to, purchasing ABCP issued by, or purchasing assets from, the ABCP conduit in the event that funds are required to repay maturing ABCP issued by the ABCP conduit. With respect to the 100 percent liquidity coverage, in the event that the ABCP conduit is unable for any reason to repay maturing ABCP issued by the issuing entity, the liquidity provider shall be obligated to pay an amount equal to any shortfall, and the total amount that may be due pursuant to the 100 percent liquidity coverage shall be equal to 100 percent of the amount of the ABCP outstanding at any time plus accrued and unpaid interest (amounts due pursuant to the required liquidity coverage may not be subject to credit performance of the ABS interests held by the ABCP conduit or reduced by the amount of credit support provided to the ABCP conduit and liquidity support that only funds performing loans or receivables or performing ABS interests does not meet the requirements of this section).

Intermediate SPV means a special purpose vehicle that:

(1) (i) Is a direct or indirect wholly-owned affiliate of the originator-seller; or

(ii) Has nominal equity owned by a trust or corporate service provider that specializes in providing independent ownership of special purpose vehicles, and such trust or corporate service provider is not affiliated with any other transaction parties;

(2) Is bankruptcy remote or otherwise isolated for insolvency purposes from the eligible ABCP conduit and from each originator-seller and each majority-owned affiliate in each case that, directly or indirectly, sells or transfers assets to such intermediate SPV;

(3) Acquires assets from the originator-seller that are originated by the originator-seller or acquired by the originator-seller in the acquisition of a business that qualifies for business combination accounting under GAAP or acquires ABS interests issued by another intermediate SPV of the originator-seller that are collateralized solely by such assets; and

(4) Issues ABS interests collateralized solely by such assets, as applicable.

Originator-seller means an entity that originates assets and sells or transfers those assets, directly or through a majority-owned affiliate, to an intermediate SPV, and includes (except for the purposes of identifying the sponsorship and affiliation of an intermediate SPV pursuant to this § __.6) any affiliate of the originator-seller that, directly or indirectly, majority controls, is majority controlled by or is under common majority control with, the originator-seller. For purposes of this definition, majority control means ownership of more than 50 percent of the equity of an entity, or ownership of any other controlling financial interest in the entity, as determined under GAAP.

Regulated liquidity provider means:

(1) A depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(2) A bank holding company (as defined in 12 U.S.C. 1841), or a subsidiary thereof;

(3) A savings and loan holding company (as defined in 12 U.S.C. 1467a), provided all or substantially all of the holding company's activities are permissible for a financial holding company under 12 U.S.C. 1843(k), or a subsidiary thereof; or

(4) A foreign bank whose home country supervisor (as defined in § 211.21 of the Federal Reserve Board's Regulation K (12 CFR 211.21)) has adopted capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision, as amended, and that is subject to such standards, or a subsidiary thereof.

(b) *In general.* An ABCP conduit sponsor satisfies the risk retention requirement of § __.3 with respect to the issuance of ABCP by an eligible ABCP conduit in a securitization transaction if, for each ABS interest the ABCP conduit acquires from an intermediate SPV:

(1) An originator-seller of the intermediate SPV retains an economic interest in the credit risk of the assets collateralizing the ABS interest acquired by the eligible ABCP conduit in the amount and manner required under § __.4 or § __.5; and

(2) The ABCP conduit sponsor:

(i) Approves each originator-seller permitted to sell or transfer assets, directly or indirectly, to an intermediate SPV from which an eligible ABCP conduit acquires ABS interests;

(ii) Approves each intermediate SPV from which an eligible ABCP conduit is permitted to acquire ABS interests;

(iii) Establishes criteria governing the ABS interests, and the securitized assets underlying the ABS interests, acquired by the ABCP conduit;

(iv) Administers the ABCP conduit by monitoring the ABS interests acquired by the ABCP conduit and the assets supporting those ABS interests, arranging for debt placement, compiling monthly reports, and ensuring compliance with the ABCP conduit documents and with the ABCP conduit's credit and investment policy; and

(v) Maintains and adheres to policies and procedures for ensuring that the requirements in this paragraph (b) of this section have been met.

(c) *Originator-seller compliance with risk retention.* The use of the risk retention option provided in this section by an ABCP conduit sponsor does not relieve the originator-seller that sponsors ABS interests acquired by an eligible ABCP conduit from such originator-seller's obligation to comply with its own risk retention obligations under this part.

(d) *Disclosures*—(1) *Periodic disclosures to investors.* An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, to each purchaser of ABCP, before or contemporaneously with the first sale of ABCP to such purchaser and at least monthly thereafter, to each holder of commercial paper issued by the ABCP conduit, in writing, each of the following items of information, which shall be as of a date not more than 60 days prior to date of first use with investors:

(i) The name and form of organization of the regulated liquidity provider that provides liquidity coverage to the eligible ABCP conduit, including a description of the material terms of such liquidity coverage, and notice of any failure to fund.

(ii) With respect to each ABS interest held by the ABCP conduit:

(A) The asset class or brief description of the underlying securitized assets;

(B) The standard industrial category code (SIC Code) for the originator-seller that will retain (or has retained) pursuant to this section an interest in the securitization transaction; and

(C) A description of the percentage amount of risk retention pursuant to the rule by the originator-seller, and whether it is in the form of an eligible horizontal residual interest, vertical interest, or revolving pool securitization seller's interest, as applicable.

(2) *Disclosures to regulators regarding originator-sellers.* An ABCP conduit sponsor relying upon this section shall provide, or cause to be provided, upon request, to the Commission and its appropriate Federal banking agency, if any, in writing, all of the information required to be provided to investors in paragraph (d)(1) of this section, and the name and form of organization of each originator-seller that will retain (or has retained) pursuant to this section an interest in the securitization transaction.

(e) *Sale or transfer of ABS interests between eligible ABCP conduits.* At any time, an eligible ABCP conduit that acquired an ABS interest in accordance with the requirements set forth in this section may transfer, and another eligible ABCP conduit may acquire, such ABS interest, if the following conditions are satisfied:

(1) The sponsors of both eligible ABCP conduits are in compliance with this section; and

(2) The same regulated liquidity provider has entered into one or more legally binding commitments to provide 100 percent liquidity coverage to all the ABCP issued by both eligible ABCP conduits.

(f) *Duty to comply.* (1) The ABCP conduit sponsor shall be responsible for compliance with this section.

(2) An ABCP conduit sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor compliance by each originator-seller which is satisfying a risk retention obligation in respect of ABS interests acquired by an eligible ABCP conduit with the requirements of paragraph (b)(1) of this section; and

(ii) In the event that the ABCP conduit sponsor determines that an originator-seller no longer complies with the requirements of paragraph (b)(1) of this section, shall:

(A) Promptly notify the holders of the ABCP, and upon request, the Commission and its appropriate Federal banking agency, if any, in writing of:

(*1*) The name and form of organization of any originator-seller that fails to retain risk in accordance with paragraph (b)(1) of this section and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit;

(*2*) The name and form of organization of any originator-seller that hedges, directly or indirectly through an intermediate SPV, its risk retention in violation of paragraph (b)(1) of this section and the amount of ABS interests issued by an intermediate SPV of such originator-seller and held by the ABCP conduit; and

(*3*) Any remedial actions taken by the ABCP conduit sponsor or other party with respect to such ABS interests; and

(B) Take other appropriate steps pursuant to the requirements of paragraphs (b)(2)(iv) and (v) of this section which may include, as appropriate, curing any breach of the requirements in this section, or removing from the eligible ABCP conduit any ABS interest that does not comply with the requirements in this section.

§ __.7 Commercial mortgage-backed securities.

(a) *Definitions.* For purposes of this section, the following definition shall apply:

Special servicer means, with respect to any securitization of commercial real estate loans, any servicer that, upon the occurrence of one or more specified conditions in the servicing agreement, has the right to service one or more assets in the transaction.

(b) *Third-party purchaser.* A sponsor may satisfy some or all of its risk retention requirements under § __.3 with respect to a securitization transaction if a third party (or any majority-owned affiliate thereof) purchases and holds for its own account an eligible horizontal residual interest in the issuing entity in the same form, amount, and manner as would be held by the sponsor under § __.4 and all of the following conditions are met:

(1) *Number of third-party purchasers.* At any time, there are no more than two third-party purchasers of an eligible horizontal residual interest. If there are two third-party purchasers, each third-party purchaser's interest must be *pari passu* with the other third-party purchaser's interest.

(2) *Composition of collateral.* The securitization transaction is collateralized solely by commercial real estate loans and servicing assets.

(3) *Source of funds.* (i) Each third-party purchaser pays for the eligible horizontal residual interest in cash at the closing of the securitization transaction.

(ii) No third-party purchaser obtains financing, directly or indirectly, for the purchase of such interest from any other person that is a party to, or an affiliate of a party to, the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer other than a special servicer affiliated with the third-party purchaser), other than a person that is a party to the transaction solely by reason of being an investor.

(4) *Third-party review.* Each third-party purchaser conducts an independent review of the credit risk of each securitized asset prior to the sale of the asset-backed securities in the securitization transaction that includes, at a minimum, a review of the underwriting standards, collateral, and expected cash flows of each commercial real estate loan that is collateral for the asset-backed securities.

(5) *Affiliation and control rights.* (i) Except as provided in paragraph (b)(5)(ii) of this section, no third-party purchaser is affiliated with any party to the securitization transaction (including, but not limited to, the sponsor, depositor, or servicer) other than investors in the securitization transaction.

(ii) Notwithstanding paragraph (b)(5)(i) of this section, a third-party purchaser may be affiliated with:

(A) The special servicer for the securitization transaction; or

(B) One or more originators of the securitized assets, as long as the assets originated by the affiliated originator or originators collectively comprise less than 10 percent of the unpaid principal balance of the securitized assets included in the securitization transaction at the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction.

(6) *Operating Advisor.* The underlying securitization transaction documents shall provide for the following:

(i) The appointment of an operating advisor (the Operating Advisor) that:

(A) Is not affiliated with other parties to the securitization transaction;

(B) Does not directly or indirectly have any financial interest in the securitization transaction other than in fees from its role as Operating Advisor; and

(C) Is required to act in the best interest of, and for the benefit of, investors as a collective whole;

(ii) Standards with respect to the Operating Advisor's experience, expertise and financial strength to fulfill its duties and responsibilities under the applicable transaction documents over the life of the securitization transaction;

(iii) The terms of the Operating Advisor's compensation with respect to the securitization transaction;

(iv) When the eligible horizontal residual interest has been reduced by principal payments, realized losses, and appraisal reduction amounts (which reduction amounts are determined in accordance with the applicable transaction documents) to a principal balance of 25 percent or less of its initial principal balance, the special servicer for the securitized assets must consult with the Operating Advisor in connection with, and prior to, any material decision in connection with its servicing of the securitized assets, including, without limitation:

(A) Any material modification of, or waiver with respect to, any provision of a loan agreement (including a mortgage, deed of trust, or other security agreement);

(B) Foreclosure upon or comparable conversion of the ownership of a property; or

(C) Any acquisition of a property.

(v) The Operating Advisor shall have adequate and timely access to information and reports necessary to fulfill its duties under the transaction documents, including all reports made available to holders of ABS interests and third-party purchasers, and shall be responsible for:

(A) Reviewing the actions of the special servicer;

(B) Reviewing all reports provided by the special servicer to the issuing entity or any holder of ABS interests;

(C) Reviewing for accuracy and consistency with the transaction documents calculations made by the special servicer; and

(D) Issuing a report to investors (including any third-party purchasers) and the issuing entity on a periodic basis concerning:

(*1*) Whether the Operating Advisor believes, in its sole discretion exercised in good faith, that the special servicer is operating in compliance with any standard required of the special servicer in the applicable transaction documents; and

(*2*) Which, if any, standards the Operating Advisor believes, in its sole discretion exercised in good faith, the special servicer has failed to comply.

(vi)(A) The Operating Advisor shall have the authority to recommend that the special servicer be replaced by a successor special servicer if the Operating Advisor determines, in its sole discretion exercised in good faith, that:

(*1*) The special servicer has failed to comply with a standard required of the special servicer in the applicable transaction documents; and

(*2*) Such replacement would be in the best interest of the investors as a collective whole; and

(B) If a recommendation described in paragraph (b)(6)(vi)(A) of this section is made, the special servicer shall be replaced upon the affirmative vote of a majority of the outstanding principal balance of all ABS interests voting on the matter, with a minimum of a quorum of ABS interests voting on the matter. For purposes of such vote, the applicable transaction documents shall specify the quorum and may not specify a quorum of more than the holders of 20 percent of the outstanding principal balance of all ABS interests in the issuing entity, with such quorum including at least three ABS interest holders that are not affiliated with each other.

(7) *Disclosures.* The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization

transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(i) The name and form of organization of each initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction;

(ii) A description of each initial third-party purchaser's experience in investing in commercial mortgage-backed securities;

(iii) Any other information regarding each initial third-party purchaser or each initial third-party purchaser's retention of the eligible horizontal residual interest that is material to investors in light of the circumstances of the particular securitization transaction;

(iv) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest that will be retained (or was retained) by each initial third-party purchaser, as well as the amount of the purchase price paid by each initial third-party purchaser for such interest;

(v) The fair value (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) of the eligible horizontal residual interest in the securitization transaction that the sponsor would have retained pursuant to § __.4 if the sponsor had relied on retaining an eligible horizontal residual interest in that section to meet the requirements of § __.3 with respect to the transaction;

(vi) A description of the material terms of the eligible horizontal residual interest retained by each initial third-party purchaser, including the same information as is required to be disclosed by sponsors retaining horizontal interests pursuant to § __.4;

(vii) The material terms of the applicable transaction documents with respect to the Operating Advisor, including without limitation:

(A) The name and form of organization of the Operating Advisor;

(B) A description of any material conflict of interest or material potential conflict of interest between the Operating Advisor and any other party to the transaction;

(C) The standards required by paragraph (b)(6)(ii) of this section and a description of how the Operating Advisor satisfies each of the standards; and

(D) The terms of the Operating Advisor's compensation under paragraph (b)(6)(iii) of this section; and

(viii) The representations and warranties concerning the securitized assets, a schedule of any securitized assets that are determined not to comply with such representations and warranties, and what factors were used to make the determination that such securitized assets should be included in the pool notwithstanding that the securitized assets did not comply with such representations and warranties, such as compensating factors or a determination that the exceptions were not material.

(8) *Hedging, transfer and pledging*—(i) *General rule.* Except as set forth in paragraph (b)(8)(ii) of this section, each third-party purchaser and its affiliates must comply with the hedging and other restrictions in § __.12 as if it were the retaining sponsor with respect to the securitization transaction and had acquired the eligible horizontal residual interest pursuant to § __.4; provided that, the hedging and other restrictions in § __.12 shall not apply on or after the date that each CRE loan (as defined in § __.14) that serves as collateral for outstanding ABS interests has been defeased. For purposes of this section, a loan is deemed to be defeased if:

(A) cash or cash equivalents of the types permitted for an eligible horizontal cash reserve account pursuant to § __.4 whose maturity corresponds to the remaining debt service obligations, have been pledged to the issuing entity as collateral for the loan and are in such amounts and payable at such times as necessary to timely generate cash sufficient to make all remaining debt service payments due on such loan; and

(B) the issuing entity has an obligation to release its lien on the loan.

(ii) *Exceptions*—(A) *Transfer by initial third-party purchaser or sponsor.* An initial third-party purchaser that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, or a sponsor that acquired an eligible horizontal residual interest at the closing of a securitization transaction in accordance with this section, may, on or after the date that is five years after the date of the closing of the securitization transaction, transfer that interest to a subsequent third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The initial third-party purchaser shall provide the sponsor with complete identifying information for the subsequent third-party purchaser.

(B) *Transfer by subsequent third-party purchaser.* At any time, a subsequent third-party purchaser that acquired an eligible horizontal residual interest pursuant to this section may transfer its interest to a different third-party purchaser that complies with paragraph (b)(8)(ii)(C) of this section. The transferring third-party purchaser shall provide the sponsor with complete identifying information for the acquiring third-party purchaser.

(C) *Requirements applicable to subsequent third-party purchasers.* A subsequent third-party purchaser is subject to all of the requirements of paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section applicable to third-party purchasers, provided that obligations under paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section that apply to initial third-party purchasers at or before the time of closing of the securitization transaction shall apply to successor third-party purchasers at or before the time of the transfer of the eligible horizontal residual interest to the successor third-party purchaser.

(c) *Duty to comply.* (1) The retaining sponsor shall be responsible for compliance with this section by itself and for compliance by each initial or subsequent third-party purchaser that acquired an eligible horizontal residual interest in the securitization transaction.

(2) A sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures to monitor each third-party purchaser's compliance with the requirements of paragraphs (b)(1), (b)(3) through (5), and (b)(8) of this section; and

(ii) In the event that the sponsor determines that a third-party purchaser no longer complies with one or more of the requirements of paragraphs (b)(1), (b)(3) through (5), or (b)(8) of this section, shall promptly notify, or cause to be notified, the holders of the ABS interests issued in the securitization transaction of such noncompliance by such third-party purchaser.

§ __.8 Federal National Mortgage Association and Federal Home Loan Mortgage Corporation ABS.

(a) *In general.* A sponsor satisfies its risk retention requirement under this part if the sponsor fully guarantees the timely payment of principal and interest on all ABS interests issued by the issuing entity in the securitization transaction and is:

(1) The Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation operating under

the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) with capital support from the United States; or

(2) Any limited-life regulated entity succeeding to the charter of either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation pursuant to section 1367(i) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(i)), provided that the entity is operating with capital support from the United States.

(b) *Certain provisions not applicable.* The provisions of § __.12(b), (c), and (d) shall not apply to a sponsor described in paragraph (a)(1) or (2) of this section, its affiliates, or the issuing entity with respect to a securitization transaction for which the sponsor has retained credit risk in accordance with the requirements of this section.

(c) *Disclosure.* A sponsor relying on this section shall provide to investors, in written form under the caption ''Credit Risk Retention'' and, upon request, to the Federal Housing Finance Agency and the Commission, a description of the manner in which it has met the credit risk retention requirements of this part.

§ __.9 Open market CLOs.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

CLO means a special purpose entity that:

(i) Issues debt and equity interests, and

(ii) Whose assets consist primarily of loans that are securitized assets and servicing assets.

CLO-eligible loan tranche means a term loan of a syndicated facility that meets the criteria set forth in paragraph (c) of this section.

CLO manager means an entity that manages a CLO, which entity is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (15 U.S.C. 80b-1 *et seq.*), or is an affiliate of such a registered investment adviser and itself is managed by such registered investment adviser.

Commercial borrower means an obligor under a corporate credit obligation (including a loan).

Initial loan syndication transaction means a transaction in which a loan is syndicated to a group of lenders.

Lead arranger means, with respect to a CLO-eligible loan tranche, an institution that:

(i) Is active in the origination, structuring and syndication of commercial loan transactions (as defined in § __.14) and has played a primary role in the structuring, underwriting and distribution on the primary market of the CLO-eligible loan tranche.

(ii) Has taken an allocation of the funded portion of the syndicated credit facility under the terms of the transaction that includes the CLO-eligible loan tranche of at least 20 percent of the aggregate principal balance at origination, and no other member (or members affiliated with each other) of the syndication group that funded at origination has taken a greater allocation; and

(iii) Is identified in the applicable agreement governing the CLO-eligible loan tranche; represents therein to the holders of the CLO-eligible loan tranche and to any holders of participation interests in such CLO-eligible loan tranche that such lead arranger satisfies the requirements of paragraph (i) of this definition and, at the time of initial funding of the CLO-eligible tranche, will satisfy the requirements of paragraph (ii) of this definition; further represents therein (solely for the purpose of assisting such holders to determine the eligibility of such CLO-eligible loan tranche to be held by an open market CLO) that in the reasonable judgment of such lead arranger, the terms of such CLO-eligible loan tranche are consistent with the requirements of paragraphs (c)(2) and (3) of this section; and covenants therein to such holders that such lead arranger will fulfill the requirements of paragraph (c)(1) of this section.

Open market CLO means a CLO:

(i) Whose assets consist of senior, secured syndicated loans acquired by such CLO directly from the sellers thereof in open market transactions and of servicing assets,

(ii) That is managed by a CLO manager, and

(iii) That holds less than 50 percent of its assets, by aggregate outstanding principal amount, in loans syndicated by lead arrangers that are affiliates of the CLO or the CLO manager or originated by originators that are affiliates of the CLO or the CLO manager.

Open market transaction means:

(i) Either an initial loan syndication transaction or a secondary market transaction in which a seller offers senior, secured syndicated loans to prospective purchasers in the loan market on market terms on an arm's length basis, which prospective purchasers include, but are not limited to, entities that are not affiliated with the seller, or

(ii) A reverse inquiry from a prospective purchaser of a senior, secured syndicated loan through a dealer in the loan market to purchase a senior, secured syndicated loan to be sourced by the dealer in the loan market.

Secondary market transaction means a purchase of a senior, secured syndicated loan not in connection with an initial loan syndication transaction but in the secondary market.

Senior, secured syndicated loan means a loan made to a commercial borrower that:

(i) Is not subordinate in right of payment to any other obligation for borrowed money of the commercial borrower,

(ii) Is secured by a valid first priority security interest or lien in or on specified collateral securing the commercial borrower's obligations under the loan, and

(iii) The value of the collateral subject to such first priority security interest or lien, together with other attributes of the obligor (including, without limitation, its general financial condition, ability to generate cash flow available for debt service and other demands for that cash flow), is adequate (in the commercially reasonable judgment of the CLO manager exercised at the time of investment) to repay the loan and to repay all other indebtedness of equal seniority secured by such first priority security interest or lien in or on the same collateral, and the CLO manager certifies, on or prior to each date that it acquires a loan constituting part of a new CLO-eligible tranche, that it has policies and procedures to evaluate the likelihood of repayment of loans acquired by the CLO and it has followed such policies and procedures in evaluating each CLO-eligible loan tranche.

(b) *In general.* A sponsor satisfies the risk retention requirements of § __.3 with respect to an open market CLO transaction if:

(1) The open market CLO does not acquire or hold any assets other than CLO-eligible loan tranches that meet the requirements of paragraph (c) of this section and servicing assets;

(2) The governing documents of such open market CLO require that, at all times, the assets of the open market CLO consist of senior, secured syndicated loans that are CLO-eligible loan tranches and servicing assets;

(3) The open market CLO does not invest in ABS interests or in credit derivatives other than hedging

transactions that are servicing assets to hedge risks of the open market CLO;

(4) All purchases of CLO-eligible loan tranches and other assets by the open market CLO issuing entity or through a warehouse facility used to accumulate the loans prior to the issuance of the CLO's ABS interests are made in open market transactions on an arms-length basis;

(5) The CLO manager of the open market CLO is not entitled to receive any management fee or gain on sale at the time the open market CLO issues its ABS interests.

(c) *CLO-eligible loan tranche.* To qualify as a CLO-eligible loan tranche, a term loan of a syndicated credit facility to a commercial borrower must have the following features:

(1) A minimum of 5 percent of the face amount of the CLO-eligible loan tranche is retained by the lead arranger thereof until the earliest of the repayment, maturity, involuntary and unscheduled acceleration, payment default, or bankruptcy default of such CLO-eligible loan tranche, provided that such lead arranger complies with limitations on hedging, transferring and pledging in § __.12 with respect to the interest retained by the lead arranger.

(2) Lender voting rights within the credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible loan tranche are defined so as to give holders of the CLO-eligible loan tranche consent rights with respect to, at minimum, any material waivers and amendments of such applicable documents, including but not limited to, adverse changes to the calculation or payments of amounts due to the holders of the CLO-eligible tranche, alterations to *pro rata* provisions, changes to voting provisions, and waivers of conditions precedent; and

(3) The pro rata provisions, voting provisions, and similar provisions applicable to the security associated with such CLO-eligible loan tranches under the CLO credit agreement and any intercreditor or other applicable agreements governing such CLO-eligible loan tranches are not materially less advantageous to the holder(s) of such CLO-eligible tranche than the terms of other tranches of comparable seniority in the broader syndicated credit facility.

(d) *Disclosures.* A sponsor relying on this section shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities in the securitization transaction and at least annually with respect to the information required by paragraph (d)(1) of this section and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(1) *Open market CLOs.* A complete list of every asset held by an open market CLO (or before the CLO's closing, in a warehouse facility in anticipation of transfer into the CLO at closing), including the following information:

(i) The full legal name, Standard Industrial Classification (SIC) category code, and legal entity identifier (LEI) issued by a utility endorsed or otherwise governed by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation (if an LEI has been obtained by the obligor) of the obligor of the loan or asset;

(ii) The full name of the specific loan tranche held by the CLO;

(iii) The face amount of the entire loan tranche held by the CLO, and the face amount of the portion thereof held by the CLO;

(iv) The price at which the loan tranche was acquired by the CLO; and

(v) For each loan tranche, the full legal name of the lead arranger subject to the sales and hedging restrictions of § __.12; and

(2) *CLO manager.* The full legal name and form of organization of the CLO manager.

§ __.10 Qualified tender option bonds.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Municipal security or *municipal securities* shall have the same meaning as the term ''municipal securities'' in Section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) and any rules promulgated pursuant to such section.

Qualified tender option bond entity means an issuing entity with respect to tender option bonds for which each of the following applies:

(i) Such entity is collateralized solely by servicing assets and by municipal securities that have the same municipal issuer and the same underlying obligor or source of payment (determined without regard to any third-party credit enhancement), and such municipal securities are not subject to substitution.

(ii) Such entity issues no securities other than:

(A) A single class of tender option bonds with a preferred variable return payable out of capital that meets the requirements of paragraph (b) of this section, and

(B) One or more residual equity interests that, in the aggregate, are entitled to all remaining income of the issuing entity.

(C) The types of securities referred to in paragraphs (ii)(A) and (B) of this definition must constitute asset-backed securities.

(iii) The municipal securities held as assets by such entity are issued in compliance with Section 103 of the Internal Revenue Code of 1986, as amended (the ''IRS Code'', 26 U.S.C. 103), such that the interest payments made on those securities are excludable from the gross income of the owners under Section 103 of the IRS Code.

(iv) The terms of all of the securities issued by the entity are structured so that all holders of such securities who are eligible to exclude interest received on such securities will be able to exclude that interest from gross income pursuant to Section 103 of the IRS Code or as ''exempt-interest dividends'' pursuant to Section 852(b)(5) of the IRS Code (26 U.S.C. 852(b)(5)) in the case of regulated investment companies under the Investment Company Act of 1940, as amended.

(v) Such entity has a legally binding commitment from a regulated liquidity provider as defined in § __.6(a), to provide a 100 percent guarantee or liquidity coverage with respect to all of the issuing entity's outstanding tender option bonds.

(vi) Such entity qualifies for monthly closing elections pursuant to IRS Revenue Procedure 2003–84, as amended or supplemented from time to time.

Tender option bond means a security which has features which entitle the holders to tender such bonds to the issuing entity for purchase at any time upon no more than 397 days' notice, for a purchase price equal to the approximate amortized cost of the security, plus accrued interest, if any, at the time of tender.

(b) *Risk retention options.* Notwithstanding anything in this section, the sponsor with respect to an issuance of tender option bonds may retain an eligible vertical interest or eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of § __.4. In order to satisfy its risk retention requirements under this section, the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may retain:

(1) An eligible vertical interest or an eligible horizontal residual interest, or any combination thereof, in accordance with the requirements of § __.4; or

(2) An interest that meets the requirements set forth in paragraph (c) of this section; or

(3) A municipal security that meets the requirements set forth in paragraph (d) of this section; or

(4) Any combination of interests and securities described in paragraphs (b)(1) through (b)(3) of this section such that the sum of the percentages held in each form equals at least five.

(c) *Tender option termination event.* The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may retain an interest that upon issuance meets the requirements of an eligible horizontal residual interest but that upon the occurrence of a ''tender option termination event'' as defined in Section 4.01(5) of IRS Revenue Procedure 2003–84, as amended or supplemented from time to time will meet the requirements of an eligible vertical interest.

(d) *Retention of a municipal security outside of the qualified tender option bond entity.* The sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity may satisfy its risk retention requirements under this Section by holding municipal securities from the same issuance of municipal securities deposited in the qualified tender option bond entity, the face value of which retained municipal securities is equal to 5 percent of the face value of the municipal securities deposited in the qualified tender option bond entity.

(e) *Disclosures.* The sponsor shall provide, or cause to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, the following disclosure in written form under the caption ''Credit Risk Retention'':

(1) The name and form of organization of the qualified tender option bond entity;

(2) A description of the form and subordination features of such retained interest in accordance with the disclosure obligations in § __.4(c);

(3) To the extent any portion of the retained interest is claimed by the sponsor as an eligible horizontal residual interest (including any interest held in compliance with § __.10(c)), the fair value of that interest (expressed as a percentage of the fair value of all of the ABS interests issued in the securitization transaction and as a dollar amount);

(4) To the extent any portion of the retained interest is claimed by the sponsor as an eligible vertical interest (including any interest held in compliance with § __.10(c)), the percentage of ABS interests issued represented by the eligible vertical interest; and

(5) To the extent any portion of the retained interest claimed by the sponsor is a municipal security held outside of the qualified tender option bond entity, the name and form of organization of the qualified tender option bond entity, the identity of the issuer of the municipal securities, the face value of the municipal securities deposited into the qualified tender option bond entity, and the face value of the municipal securities retained by the sponsor or its majority-owned affiliates and subject to the transfer and hedging prohibition.

(f) *Prohibitions on Hedging and Transfer.* The prohibitions on transfer and hedging set forth in § __.12, apply to any interests or municipal securities retained by the sponsor with respect to an issuance of tender option bonds by a qualified tender option bond entity pursuant to of this section.

Subpart C—Transfer of Risk Retention

§ __.11 Allocation of risk retention to an originator.

(a) *In general.* A sponsor choosing to retain an eligible vertical interest or an eligible horizontal residual interest (including an eligible horizontal cash reserve account), or combination thereof under § __.4, with respect to a securitization transaction may offset the amount of its risk retention requirements under § __.4 by the amount of the eligible interests, respectively, acquired by an originator of one or more of the securitized assets if:

(1) At the closing of the securitization transaction:

(i) The originator acquires the eligible interest from the sponsor and retains such interest in the same manner and proportion (as between horizontal and vertical interests) as the sponsor under § __.4, as such interest was held prior to the acquisition by the originator;

(ii) The ratio of the percentage of eligible interests acquired and retained by the originator to the percentage of eligible interests otherwise required to be retained by the sponsor pursuant to § __.4, does not exceed the ratio of:

(A) The unpaid principal balance of all the securitized assets originated by the originator; to

(B) The unpaid principal balance of all the securitized assets in the securitization transaction;

(iii) The originator acquires and retains at least 20 percent of the aggregate risk retention amount otherwise required to be retained by the sponsor pursuant to § __.4; and

(iv) The originator purchases the eligible interests from the sponsor at a price that is equal, on a dollar-for-dollar basis, to the amount by which the sponsor's required risk retention is reduced in accordance with this section, by payment to the sponsor in the form of:

(A) Cash; or

(B) A reduction in the price received by the originator from the sponsor or depositor for the assets sold by the originator to the sponsor or depositor for inclusion in the pool of securitized assets.

(2) *Disclosures.* In addition to the disclosures required pursuant to § __.4(c), the sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of the asset-backed securities as part of the securitization transaction and, upon request, to the Commission and its appropriate Federal banking agency, if any, in written form under the caption ''Credit Risk Retention'', the name and form of organization of any originator that will acquire and retain (or has acquired and retained) an interest in the transaction pursuant to this section, including a description of the form and amount (expressed as a percentage and dollar amount (or corresponding amount in the foreign currency in which the ABS interests are issued, as applicable)) and nature (*e.g.,* senior or subordinated) of the interest, as well as the method of payment for such interest under paragraph (a)(1)(iv) of this section.

(3) *Hedging, transferring and pledging.* The originator and each of its affiliates complies with the hedging and other restrictions in § __.12 with respect to the interests retained by the originator pursuant to this section as if it were the retaining sponsor and was required to retain the interest under subpart B of this part.

(b) *Duty to comply.* (1) The retaining sponsor shall be responsible for compliance with this section.

(2) A retaining sponsor relying on this section:

(i) Shall maintain and adhere to policies and procedures that are reasonably designed to monitor the compliance by each originator that is allocated a portion of the sponsor's risk retention obligations with the requirements in paragraphs (a)(1) and (3) of this section; and

(ii) In the event the sponsor determines that any such originator no longer complies with any of the requirements in paragraphs (a)(1) and (3) of this section, shall promptly notify, or cause to be notified, the holders of the ABS interests issued in the securitization transaction of such noncompliance by such originator.

§ __.12 Hedging, transfer and financing prohibitions.

(a) *Transfer.* Except as permitted by § __.7(b)(8), and subject to § __.5, a retaining sponsor may not sell or otherwise transfer any interest or assets that the sponsor is required to retain pursuant to subpart B of this part to any person other than an entity that is and remains a majority-owned affiliate of the sponsor and each such majority-owned affiliate shall be subject to the same restrictions.

(b) *Prohibited hedging by sponsor and affiliates.* A retaining sponsor and its affiliates may not purchase or sell a security, or other financial instrument, or enter into an agreement, derivative or other position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative, or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor (or any of its majority-owned affiliates) is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the sponsor (or any of its majority-owned affiliates) to the credit risk of one or more of the particular ABS interests that the retaining sponsor (or any of its majority-owned affiliates) is required to retain with respect to a securitization transaction pursuant to subpart B of this part or one or more of the particular securitized assets that collateralize the asset-backed securities issued in the securitization transaction.

(c) *Prohibited hedging by issuing entity.* The issuing entity in a securitization transaction may not purchase or sell a security or other financial instrument, or enter into an agreement, derivative or position, with any other person if:

(1) Payments on the security or other financial instrument or under the agreement, derivative or position are materially related to the credit risk of one or more particular ABS interests that the retaining sponsor for the transaction (or any of its majority-owned affiliates) is required to retain with respect to the securitization transaction pursuant to subpart B of this part; and

(2) The security, instrument, agreement, derivative, or position in any way reduces or limits the financial exposure of the retaining sponsor (or any of its majority-owned affiliates) to the credit risk of one or more of the particular ABS interests that the sponsor (or any of its majority-owned affiliates) is required to retain pursuant to subpart B of this part.

(d) *Permitted hedging activities.* The following activities shall not be considered prohibited hedging activities under paragraph (b) or (c) of this section:

(1) Hedging the interest rate risk (which does not include the specific interest rate risk, known as spread risk, associated with the ABS interest that is otherwise considered part of the credit risk) or foreign exchange risk arising from one or more of the particular ABS interests required to be retained by the sponsor (or any of its majority-owned affiliates) under subpart B of this part or one or more of the particular securitized assets that underlie the asset-backed securities issued in the securitization transaction; or

(2) Purchasing or selling a security or other financial instrument or entering into an agreement, derivative, or other position with any third party where payments on the security or other financial instrument or under the agreement, derivative, or position are based, directly or indirectly, on an index of instruments that includes asset-backed securities if:

(i) Any class of ABS interests in the issuing entity that were issued in connection with the securitization transaction and that are included in the index represents no more than 10 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS interests are issued, as applicable) of all instruments included in the index; and

(ii) All classes of ABS interests in all issuing entities that were issued in connection with any securitization transaction in which the sponsor (or any of its majority-owned affiliates) is required to retain an interest pursuant to subpart B of this part and that are included in the index represent, in the aggregate, no more than 20 percent of the dollar-weighted average (or corresponding weighted average in the currency in which the ABS interests are issued, as applicable) of all instruments included in the index.

(e) *Prohibited non-recourse financing.* Neither a retaining sponsor nor any of its affiliates may pledge as collateral for any obligation (including a loan, repurchase agreement, or other financing transaction) any ABS interest that the sponsor is required to retain with respect to a securitization transaction pursuant to subpart B of this part unless such obligation is with full recourse to the sponsor or affiliate, respectively.

(f) *Duration of the hedging and transfer restrictions*—(1) *General rule.* Except as provided in paragraph (f)(2) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the latest of:

(i) The date on which the total unpaid principal balance (if applicable) of the securitized assets that collateralize the securitization transaction has been reduced to 33 percent of the total unpaid principal balance of the securitized assets as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction;

(ii) The date on which the total unpaid principal obligations under the ABS interests issued in the securitization transaction has been reduced to 33 percent of the total unpaid principal obligations of the ABS interests at closing of the securitization transaction; or

(iii) Two years after the date of the closing of the securitization transaction.

(2) *Securitizations of residential mortgages.* (i) If all of the assets that collateralize a securitization transaction subject to risk retention under this part are residential mortgages, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire on or after the date that is the later of:

(A) Five years after the date of the closing of the securitization transaction; or

(B) The date on which the total unpaid principal balance of the residential mortgages that collateralize the securitization transaction has been reduced to 25 percent of the total unpaid principal balance of such residential mortgages at the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction.

(ii) Notwithstanding paragraph (f)(2)(i) of this section, the prohibitions on sale and hedging pursuant to paragraphs (a) and (b) of this section shall expire with respect to the sponsor of a securitization transaction described in paragraph (f)(2)(i) of this section on or after the date that is seven years after the date of the closing of the securitization transaction.

(3) *Conservatorship or receivership of sponsor.* A conservator or receiver of the

sponsor (or any other person holding risk retention pursuant to this part) of a securitization transaction is permitted to sell or hedge any economic interest in the securitization transaction if the conservator or receiver has been appointed pursuant to any provision of federal or State law (or regulation promulgated thereunder) that provides for the appointment of the Federal Deposit Insurance Corporation, or an agency or instrumentality of the United States or of a State as conservator or receiver, including without limitation any of the following authorities:

(i) 12 U.S.C. 1811;

(ii) 12 U.S.C. 1787;

(iii) 12 U.S.C. 4617; or

(iv) 12 U.S.C. 5382.

(4) *Revolving pool securitizations.* The provisions of paragraphs (f)(1) and (2) are not available to sponsors of revolving pool securitizations with respect to the forms of risk retention specified in § __.5.

Subpart D—Exceptions and Exemptions

§ __.13 Exemption for qualified residential mortgages.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Currently performing means the borrower in the mortgage transaction is not currently thirty (30) days or more past due, in whole or in part, on the mortgage transaction.

Qualified residential mortgage means a ''qualified mortgage'' as defined in section 129C of the Truth in Lending Act (15 U.S.C.1639c) and regulations issued thereunder, as amended from time to time.

(b) *Exemption.* A sponsor shall be exempt from the risk retention requirements in subpart B of this part with respect to any securitization transaction, if:

(1) All of the assets that collateralize the asset-backed securities are qualified residential mortgages or servicing assets;

(2) None of the assets that collateralize the asset-backed securities are asset-backed securities;

(3) As of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, each qualified residential mortgage collateralizing the asset-backed securities is currently performing; and

(4)(i) The depositor with respect to the securitization transaction certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages or servicing assets and has concluded that its internal supervisory controls are effective; and

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls must be performed, for each issuance of an asset-backed security in reliance on this section, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (b)(4)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to the Commission and its appropriate Federal banking agency, if any.

(c) *Repurchase of loans subsequently determined to be non-qualified after closing.* A sponsor that has relied on the exemption provided in paragraph (b) of this section with respect to a securitization transaction shall not lose such exemption with respect to such transaction if, after closing of the securitization transaction, it is determined that one or more of the residential mortgage loans collateralizing the asset-backed securities does not meet all of the criteria to be a qualified residential mortgage *provided that:*

(1) The depositor complied with the certification requirement set forth in paragraph (b)(4) of this section;

(2) The sponsor repurchases the loan(s) from the issuing entity at a price at least equal to the remaining aggregate unpaid principal balance and accrued interest on the loan(s) no later than 90 days after the determination that the loans do not satisfy the requirements to be a qualified residential mortgage; and

(3) The sponsor promptly notifies, or causes to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is (or are) required to be repurchased by the sponsor pursuant to paragraph (c)(2) of this section, including the amount of such repurchased loan(s) and the cause for such repurchase.

§ __.14 Definitions applicable to qualifying commercial loans, qualifying commercial real estate loans, and qualifying automobile loans.

The following definitions apply for purposes of §§ __.15 through __.18:

Appraisal Standards Board means the board of the Appraisal Foundation that develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP), establishing generally accepted standards for the appraisal profession.

Automobile loan:

(1) Means any loan to an individual to finance the purchase of, and that is secured by a first lien on, a passenger car or other passenger vehicle, such as a minivan, van, sport-utility vehicle, pickup truck, or similar light truck for personal, family, or household use; and

(2) Does not include any:

(i) Loan to finance fleet sales;

(ii) Personal cash loan secured by a previously purchased automobile;

(iii) Loan to finance the purchase of a commercial vehicle or farm equipment that is not used for personal, family, or household purposes;

(iv) Lease financing;

(v) Loan to finance the purchase of a vehicle with a salvage title; or

(vi) Loan to finance the purchase of a vehicle intended to be used for scrap or parts.

Combined loan-to-value (CLTV) ratio means, at the time of origination, the sum of the principal balance of a first-lien mortgage loan on the property, plus the principal balance of any junior-lien mortgage loan that, to the creditor's knowledge, would exist at the closing of the transaction and that is secured by the same property, divided by:

(1) For acquisition funding, the lesser of the purchase price or the estimated market value of the real property based on an appraisal that meets the requirements set forth in § __.17(a)(2)(ii); or

(2) For refinancing, the estimated market value of the real property based on an appraisal that meets the requirements set forth in § __.17(a)(2)(ii).

Commercial loan means a secured or unsecured loan to a company or an individual for business purposes, other than any:

(1) Loan to purchase or refinance a one-to-four family residential property;

(2) Commercial real estate loan.

Commercial real estate (CRE) loan means:

(1) A loan secured by a property with five or more single family units, or by nonfarm nonresidential real property, the primary source (50 percent or more) of repayment for which is expected to be:

(i) The proceeds of the sale, refinancing, or permanent financing of the property; or

(ii) Rental income associated with the property;

(2) Loans secured by improved land if the obligor owns the fee interest in the land and the land is leased to a third party who owns all improvements on the land, and the improvements are nonresidential or residential with five or more single family units; and

(3) Does not include:

(i) A land development and construction loan (including 1- to 4-family residential or commercial construction loans);

(ii) Any other land loan; or

(iii) An unsecured loan to a developer.

Debt service coverage (DSC) ratio means:

(1) For qualifying leased CRE loans, qualifying multi-family loans, and other CRE loans:

(i) The annual NOI less the annual replacement reserve of the CRE property at the time of origination of the CRE loan(s) divided by

(ii) The sum of the borrower's annual payments for principal and interest (calculated at the fully-indexed rate) on any debt obligation.

(2) For commercial loans:

(i) The borrower's EBITDA as of the most recently completed fiscal year divided by

(ii) The sum of the borrower's annual payments for principal and interest on all debt obligations.

Debt to income (DTI) ratio means the borrower's total debt, including the monthly amount due on the automobile loan, divided by the borrower's monthly income.

Earnings before interest, taxes, depreciation, and amortization (EBITDA) means the annual income of a business before expenses for interest, taxes, depreciation and amortization are deducted, as determined in accordance with GAAP.

Environmental risk assessment means a process for determining whether a property is contaminated or exposed to any condition or substance that could result in contamination that has an adverse effect on the market value of the property or the realization of the collateral value.

First lien means a lien or encumbrance on property that has priority over all other liens or encumbrances on the property.

Junior lien means a lien or encumbrance on property that is lower in priority relative to other liens or encumbrances on the property.

Leverage ratio means the borrower's total debt divided by the borrower's EBITDA.

Loan-to-value (LTV) ratio means, at the time of origination, the principal balance of a first-lien mortgage loan on the property divided by:

(1) For acquisition funding, the lesser of the purchase price or the estimated market value of the real property based on an appraisal that meets the requirements set forth in § __.17(a)(2)(ii); or

(2) For refinancing, the estimated market value of the real property based on an appraisal that meets the requirements set forth in § __.17(a)(2)(ii).

Model year means the year determined by the manufacturer and reflected on the vehicle's Motor Vehicle Title as part of the vehicle description.

Net operating income (NOI) refers to the income a CRE property generates for the owner after all expenses have been deducted for federal income tax purposes, except for depreciation, debt service expenses, and federal and state income taxes, and excluding any unusual and nonrecurring items of income.

Operating affiliate means an affiliate of a borrower that is a lessor or similar party with respect to the commercial real estate securing the loan.

Payments-in-kind means payments of accrued interest that are not paid in cash when due, and instead are paid by increasing the principal balance of the loan or by providing equity in the borrowing company.

Purchase money security interest means a security interest in property that secures the obligation of the obligor incurred as all or part of the price of the property.

Purchase price means the amount paid by the borrower for the vehicle net of any incentive payments or manufacturer cash rebates.

Qualified tenant means:

(1) A tenant with a lease who has satisfied all obligations with respect to the property in a timely manner; or

(2) A tenant who originally had a lease that subsequently expired and currently is leasing the property on a month-to-month basis, has occupied the property for at least three years prior to the date of origination, and has satisfied all obligations with respect to the property in a timely manner.

Qualifying leased CRE loan means a CRE loan secured by commercial nonfarm real property, other than a multi-family property or a hotel, inn, or similar property:

(1) That is occupied by one or more qualified tenants pursuant to a lease agreement with a term of no less than one (1) month; and

(2) Where no more than 20 percent of the aggregate gross revenue of the property is payable from one or more tenants who:

(i) Are subject to a lease that will terminate within six months following the date of origination; or

(ii) Are not qualified tenants.

Qualifying multi-family loan means a CRE loan secured by any residential property (excluding a hotel, motel, inn, hospital, nursing home, or other similar facility where dwellings are not leased to residents):

(1) That consists of five or more dwelling units (including apartment buildings, condominiums, cooperatives and other similar structures) primarily for residential use; and

(2) Where at least 75 percent of the NOI is derived from residential rents and tenant amenities (including income from parking garages, health or swim clubs, and dry cleaning), and not from other commercial uses.

Rental income means:

(1) Income derived from a lease or other occupancy agreement between the borrower or an operating affiliate of the borrower and a party which is not an affiliate of the borrower for the use of real property or improvements serving as collateral for the applicable loan; and

(2) Other income derived from hotel, motel, dormitory, nursing home, assisted living, mini-storage warehouse or similar properties that are used primarily by parties that are not affiliates or employees of the borrower or its affiliates.

Replacement reserve means the monthly capital replacement or maintenance amount based on the property type, age, construction and condition of the property that is adequate to maintain the physical condition and NOI of the property.

Salvage title means a form of vehicle title branding, which notes that the vehicle has been severely damaged and/or deemed a total loss and uneconomical to repair by an insurance company that paid a claim on the vehicle.

Total debt, with respect to a borrower, means:

(1) In the case of an automobile loan, the sum of:

(i) All monthly housing payments (rent- or mortgage-related, including property taxes, insurance and home owners association fees); and

(ii) Any of the following that is dependent upon the borrower's income for payment:

(A) Monthly payments on other debt and lease obligations, such as credit card loans or installment loans, including the monthly amount due on the automobile loan;

(B) Estimated monthly amortizing payments for any term debt, debts with other than monthly payments and debts not in repayment (such as deferred student loans, interest-only loans); and

(C) Any required monthly alimony, child support or court-ordered payments; and

(2) In the case of a commercial loan, the outstanding balance of all long-term debt (obligations that have a remaining maturity of more than one year) and the current portion of all debt that matures in one year or less.

Total liabilities ratio means the borrower's total liabilities divided by the sum of the borrower's total liabilities and equity, less the borrower's intangible assets, with each component determined in accordance with GAAP.

Trade-in allowance means the amount a vehicle purchaser is given as a credit at the purchase of a vehicle for the fair exchange of the borrower's existing vehicle to compensate the dealer for some portion of the vehicle purchase price, not to exceed the highest trade-in value of the existing vehicle, as determined by a nationally recognized automobile pricing agency and based on the manufacturer, year, model, features, mileage, and condition of the vehicle, less the payoff balance of any outstanding debt collateralized by the existing vehicle.

Uniform Standards of Professional Appraisal Practice (USPAP) means generally accepted standards for professional appraisal practice issued by the Appraisal Standards Board of the Appraisal Foundation.

§ __.15 Qualifying commercial loans, commercial real estate loans, and automobile loans.

(a) *General exception for qualifying assets.* Commercial loans, commercial real estate loans, and automobile loans that are securitized through a securitization transaction shall be subject to a 0 percent risk retention requirement under subpart B, provided that the following conditions are met:

(1) The assets meet the underwriting standards set forth in §§ __.16 (qualifying commercial loans), __.17 (qualifying CRE loans), or __.18 (qualifying automobile loans) of this part, as applicable;

(2) The securitization transaction is collateralized solely by loans of the same asset class and by servicing assets;

(3) The securitization transaction does not permit reinvestment periods; and

(4) The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of asset-backed securities of the issuing entity, and, upon request, to the Commission, and to its appropriate Federal banking agency, if any, in written form under the caption ''Credit Risk Retention'', a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans with 0 percent risk retention.

(b) *Risk retention requirement.* For any securitization transaction described in paragraph (a) of this section, the percentage of risk retention required under § __.3(a) is reduced by the percentage evidenced by the ratio of the unpaid principal balance of the qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans (as applicable) to the total unpaid principal balance of commercial loans, CRE loans, or automobile loans (as applicable) that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the qualifying asset ratio); provided that:

(1) The qualifying asset ratio is measured as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction;

(2) If the qualifying asset ratio would exceed 50 percent, the qualifying asset ratio shall be deemed to be 50 percent; and

(3) The disclosure required by paragraph (a)(4) of this section also includes descriptions of the qualifying commercial loans, qualifying CRE loans, and qualifying automobile loans (qualifying assets) and descriptions of the assets that are not qualifying assets, and the material differences between the group of qualifying assets and the group of assets that are not qualifying assets with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

(c) *Exception for securitizations of qualifying assets only.* Notwithstanding other provisions of this section, the risk retention requirements of subpart B of this part shall not apply to securitization transactions where the transaction is collateralized solely by servicing assets and either qualifying commercial loans, qualifying CRE loans, or qualifying automobile loans.

(d) *Record maintenance.* A sponsor must retain the disclosures required in paragraphs (a) and (b) of this section and the certifications required in §§ __.16(a)(8), __.17(a)(10), and __.18(a)(8), as applicable, in its records until three years after all ABS interests issued in the securitization are no longer outstanding. The sponsor must provide the disclosures and certifications upon request to the Commission and the sponsor's appropriate Federal banking agency, if any.

§ __.16 Underwriting standards for qualifying commercial loans.

(a) *Underwriting, product and other standards.* (1) Prior to origination of the commercial loan, the originator:

(i) Verified and documented the financial condition of the borrower:

(A) As of the end of the borrower's two most recently completed fiscal years; and

(B) During the period, if any, since the end of its most recently completed fiscal year;

(ii) Conducted an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections;

(iii) Determined that, based on the previous two years' actual performance, the borrower had:

(A) A total liabilities ratio of 50 percent or less;

(B) A leverage ratio of 3.0 or less; and

(C) A DSC ratio of 1.5 or greater;

(iv) Determined that, based on the two years of projections, which include the new debt obligation, following the closing date of the loan, the borrower will have:

(A) A total liabilities ratio of 50 percent or less;

(B) A leverage ratio of 3.0 or less; and

(C) A DSC ratio of 1.5 or greater.

(2) Prior to, upon or promptly following the inception of the loan, the originator:

(i) If the loan is originated on a secured basis, obtains a perfected security interest (by filing, title notation or otherwise) or, in the case of real property, a recorded lien, on all of the property pledged to collateralize the loan; and

(ii) If the loan documents indicate the purpose of the loan is to finance the purchase of tangible or intangible property, or to refinance such a loan, obtains a first lien on the property.

(3) The loan documentation for the commercial loan includes covenants that:

(i) Require the borrower to provide to the servicer of the commercial loan the borrower's financial statements and supporting schedules on an ongoing basis, but not less frequently than quarterly;

(ii) Prohibit the borrower from retaining or entering into a debt arrangement that permits payments-in-kind;

(iii) Impose limits on:

(A) The creation or existence of any other security interest or lien with respect to any of the borrower's property that serves as collateral for the loan;

(B) The transfer of any of the borrower's assets that serve as collateral for the loan; and

(C) Any change to the name, location or organizational structure of the borrower, or any other party that pledges collateral for the loan;

(iv) Require the borrower and any other party that pledges collateral for the loan to:

(A) Maintain insurance that protects against loss on the collateral for the commercial loan at least up to the amount of the loan, and that names the originator or any subsequent holder of the loan as an additional insured or loss payee;

(B) Pay taxes, charges, fees, and claims, where non-payment might give rise to a lien on any collateral;

(C) Take any action required to perfect or protect the security interest and first lien (as applicable) of the originator or any subsequent holder of the loan in any collateral for the commercial loan or the priority thereof, and to defend any collateral against claims adverse to the lender's interest;

(D) Permit the originator or any subsequent holder of the loan, and the servicer of the loan, to inspect any collateral for the commercial loan and the books and records of the borrower; and

(E) Maintain the physical condition of any collateral for the commercial loan.

(4) Loan payments required under the loan agreement are:

(i) Based on level monthly payments of principal and interest (at the fully indexed rate) that fully amortize the debt over a term that does not exceed five years from the date of origination; and

(ii) To be made no less frequently than quarterly over a term that does not exceed five years.

(5) The primary source of repayment for the loan is revenue from the business operations of the borrower.

(6) The loan was funded within the six (6) months prior to the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction.

(7) At the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, all payments due on the loan are contractually current.

(8)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying commercial loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § __.15 meet all of the requirements set forth in paragraphs (a)(1) through (7) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(8)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(8)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § __.15 with respect to a qualifying commercial loan and it is subsequently determined that the loan did not meet all of the requirements set forth in paragraphs (a)(1) through (7) of this section, the sponsor shall not lose the benefit of the exception with respect to the commercial loan if the depositor complied with the certification requirement set forth in paragraph (a)(8) of this section and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (7) of this section is not material; or

(2) No later than 90 days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (7) of this section, the sponsor:

(i) Effectuates cure, establishing conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such loan(s) and the cause for such cure or repurchase.

§ __.17 Underwriting standards for qualifying CRE loans.

(a) *Underwriting, product and other standards.* (1) The CRE loan must be secured by the following:

(i) An enforceable first lien, documented and recorded appropriately pursuant to applicable law, on the commercial real estate and improvements;

(ii)(A) An assignment of:

(*1*) Leases and rents and other occupancy agreements related to the commercial real estate or improvements or the operation thereof for which the borrower or an operating affiliate is a lessor or similar party and all payments under such leases and occupancy agreements; and

(*2*) All franchise, license and concession agreements related to the commercial real estate or improvements or the operation thereof for which the borrower or an operating affiliate is a lessor, licensor, concession granter or similar party and all payments under such other agreements, whether the assignments described in this paragraph (a)(1)(ii)(A)(*2*) are absolute or are stated to be made to the extent permitted by the agreements governing the applicable franchise, license or concession agreements;

(B) An assignment of all other payments due to the borrower or due to any operating affiliate in connection with the operation of the property described in paragraph (a)(1)(i) of this section; and

(C) The right to enforce the agreements described in paragraph (a)(1)(ii)(A) of this section and the agreements under which payments under paragraph (a)(1)(ii)(B) of this section are due against, and collect amounts due from, each lessee, occupant or other obligor whose payments were assigned pursuant to paragraphs (a)(1)(ii)(A) or (B) of this section upon a breach by the borrower of any of the terms of, or the occurrence of any other event of default (however denominated) under, the loan documents relating to such CRE loan; and

(iii) A security interest:

(A) In all interests of the borrower and any applicable operating affiliate in all tangible and intangible personal property of any kind, in or used in the operation of or in connection with, pertaining to, arising from, or constituting, any of the collateral described in paragraphs (a)(1)(i) or (ii) of this section; and

(B) In the form of a perfected security interest if the security interest in such property can be perfected by the filing of a financing statement, fixture filing, or similar document pursuant to the law governing the perfection of such security interest;

(2) Prior to origination of the CRE loan, the originator:

(i) Verified and documented the current financial condition of the borrower and each operating affiliate;

(ii) Obtained a written appraisal of the real property securing the loan that:

(A) Had an effective date not more than six months prior to the origination date of the loan by a competent and appropriately State-certified or State-licensed appraiser;

(B) Conforms to generally accepted appraisal standards as evidenced by the USPAP and the appraisal requirements [1] of the Federal banking agencies; and

(C) Provides an ''as is'' opinion of the market value of the real property, which includes an income approach; [2]

(iii) Qualified the borrower for the CRE loan based on a monthly payment amount derived from level monthly payments consisting of both principal and interest (at the fully-indexed rate) over the term of the loan, not exceeding 25 years, or 30 years for a qualifying multi-family property;

(iv) Conducted an environmental risk assessment to gain environmental information about the property securing the loan and took appropriate steps to mitigate any environmental liability determined to exist based on this assessment;

(v) Conducted an analysis of the borrower's ability to service its overall debt obligations during the next two years, based on reasonable projections (including operating income projections for the property);

(vi)(A) Determined that based on the two years' actual performance immediately preceding the origination of the loan, the borrower would have had:

(*1*) A DSC ratio of 1.5 or greater, if the loan is a qualifying leased CRE loan, net of any income derived from a tenant(s) who is not a qualified tenant(s);

(*2*) A DSC ratio of 1.25 or greater, if the loan is a qualifying multi-family property loan; or

(*3*) A DSC ratio of 1.7 or greater, if the loan is any other type of CRE loan;

(B) If the borrower did not own the property for any part of the last two years prior to origination, the calculation of the DSC ratio, for purposes of paragraph (a)(2)(vi)(A) of this section, shall include the property's operating income for any portion of the two-year period during which the borrower did not own the property;

(vii) Determined that, based on two years of projections, which include the new debt obligation, following the origination date of the loan, the borrower will have:

(A) A DSC ratio of 1.5 or greater, if the loan is a qualifying leased CRE loan, net of any income derived from a tenant(s) who is not a qualified tenant(s);

(B) A DSC ratio of 1.25 or greater, if the loan is a qualifying multi-family property loan; or

(C) A DSC ratio of 1.7 or greater, if the loan is any other type of CRE loan.

(3) The loan documentation for the CRE loan includes covenants that:

(i) Require the borrower to provide the borrower's financial statements and supporting schedules to the servicer on an ongoing basis, but not less frequently than quarterly, including information on existing, maturing and new leasing or rent-roll activity for the property securing the loan, as appropriate; and

(ii) Impose prohibitions on:

(A) The creation or existence of any other security interest with respect to the collateral for the CRE loan described in paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section, except as provided in paragraph (a)(4) of this section;

(B) The transfer of any collateral for the CRE loan described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section or of any other collateral consisting of fixtures, furniture, furnishings, machinery or equipment other than any such fixture, furniture, furnishings, machinery or equipment that is obsolete or surplus; and

(C) Any change to the name, location or organizational structure of any borrower, operating affiliate or other pledgor unless such borrower, operating affiliate or other pledgor shall have given the holder of the loan at least 30 days advance notice and, pursuant to applicable law governing perfection and priority, the holder of the loan is able to take all steps necessary to continue its perfection and priority during such 30-day period.

(iii) Require each borrower and each operating affiliate to:

(A) Maintain insurance that protects against loss on collateral for the CRE loan described in paragraph (a)(1)(i) of this section for an amount no less than the replacement cost of the property improvements, and names the originator or any subsequent holder of the loan as an additional insured or lender loss payee;

(B) Pay taxes, charges, fees, and claims, where non-payment might give rise to a lien on collateral for the CRE loan described in paragraphs (a)(1)(i) and (ii) of this section;

(C) Take any action required to:

(*1*) Protect the security interest and the enforceability and priority thereof in the collateral described in paragraphs (a)(1)(i) and (a)(1)(ii)(A) of this section and defend such collateral against claims adverse to the originator's or any subsequent holder's interest; and

(*2*) Perfect the security interest of the originator or any subsequent holder of the loan in any other collateral for the CRE loan to the extent that such security interest is required by this section to be perfected;

(D) Permit the originator or any subsequent holder of the loan, and the servicer, to inspect any collateral for the CRE loan and the books and records of the borrower or other party relating to any collateral for the CRE loan;

(E) Maintain the physical condition of collateral for the CRE loan described in paragraph (a)(1)(i) of this section;

(F) Comply with all environmental, zoning, building code, licensing and other laws, regulations, agreements, covenants, use restrictions, and proffers applicable to collateral for the CRE loan described in paragraph (a)(1)(i) of this section;

(G) Comply with leases, franchise agreements, condominium declarations, and other documents and agreements relating to the operation of collateral for the CRE loan described in paragraph (a)(1)(i) of this section, and to not modify any material terms and conditions of such agreements over the term of the loan without the consent of the originator or any subsequent holder of the loan, or the servicer; and

(H) Not materially alter collateral for the CRE loan described in paragraph (a)(1)(i) of this section without the consent of the originator or any subsequent holder of the loan, or the servicer.

(4) The loan documentation for the CRE loan prohibits the borrower and each operating affiliate from obtaining a loan secured by a junior lien on collateral for the CRE loan described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, unless:

(i) The sum of the principal amount of such junior lien loan, plus the principal amount of all other loans secured by collateral described in paragraph (a)(1)(i) or (a)(1)(ii)(A) of this section, does not exceed the applicable CLTV ratio in paragraph (a)(5) of this

[1] 12 CFR part 34, subpart C (OCC); 12 CFR part 208, subpart E, and 12 CFR part 225, subpart G (Board); and 12 CFR part 323 (FDIC).

[2] See USPAP, Standard 1.

section, based on the appraisal at origination of such junior lien loan; or

(ii) Such loan is a purchase money obligation that financed the acquisition of machinery or equipment and the borrower or operating affiliate (as applicable) pledges such machinery and equipment as additional collateral for the CRE loan.

(5) At origination, the applicable loan-to-value ratios for the loan are:

(i) LTV less than or equal to 65 percent and CLTV less than or equal to 70 percent; or

(ii) LTV less than or equal to 60 percent and CLTV less than or equal to 65 percent, if an appraisal used to meet the requirements set forth in paragraph (a)(2)(ii) of this section used a direct capitalization rate, and that rate is less than or equal to the sum of:

(A) The 10-year swap rate, as reported in the Federal Reserve's H.15 Report (or any successor report) as of the date concurrent with the effective date of such appraisal; and

(B) 300 basis points.

(iii) If the appraisal required under paragraph (a)(2)(ii) of this section included a direct capitalization method using an overall capitalization rate, that rate must be disclosed to potential investors in the securitization.

(6) All loan payments required to be made under the loan agreement are:

(i) Based on level monthly payments of principal and interest (at the fully indexed rate) to fully amortize the debt over a term that does not exceed 25 years, or 30 years for a qualifying multifamily loan; and

(ii) To be made no less frequently than monthly over a term of at least ten years.

(7) Under the terms of the loan agreement:

(i) Any maturity of the note occurs no earlier than ten years following the date of origination;

(ii) The borrower is not permitted to defer repayment of principal or payment of interest; and

(iii) The interest rate on the loan is:

(A) A fixed interest rate;

(B) An adjustable interest rate and the borrower, prior to or concurrently with origination of the CRE loan, obtained a derivative that effectively results in a fixed interest rate; or

(C) An adjustable interest rate and the borrower, prior to or concurrently with origination of the CRE loan, obtained a derivative that established a cap on the interest rate for the term of the loan, and the loan meets the underwriting criteria in paragraphs (a)(2)(vi) and (vii) of this section using the maximum interest rate allowable under the interest rate cap.

(8) The originator does not establish an interest reserve at origination to fund all or part of a payment on the loan.

(9) At the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, all payments due on the loan are contractually current.

(10)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying CRE loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § __.15 meet all of the requirements set forth in paragraphs (a)(1) through (9) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(10)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security;

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(10)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any; and

(11) Within two weeks of the closing of the CRE loan by its originator or, if sooner, prior to the transfer of such CRE loan to the issuing entity, the originator shall have obtained a UCC lien search from the jurisdiction of organization of the borrower and each operating affiliate, that does not report, as of the time that the security interest of the originator in the property described in paragraph (a)(1)(iii) of this section was perfected, other higher priority liens of record on any property described in paragraph (a)(1)(iii) of this section, other than purchase money security interests.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § ___.15 with respect to a qualifying CRE loan and it is subsequently determined that the CRE loan did not meet all of the requirements set forth in paragraphs (a)(1) through (9) and (a)(11) of this section, the sponsor shall not lose the benefit of the exception with respect to the CRE loan if the depositor complied with the certification requirement set forth in paragraph (a)(10) of this section, and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (9) and (a)(11) of this section is not material; or;

(2) No later than 90 days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (9) or (a)(11) of this section, the sponsor:

(i) Effectuates cure, restoring conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such repurchased loan(s) and the cause for such cure or repurchase.

§ __.18 Underwriting standards for qualifying automobile loans.

(a) *Underwriting, product and other standards.* (1) Prior to origination of the automobile loan, the originator:

(i) Verified and documented that within 30 days of the date of origination:

(A) The borrower was not currently 30 days or more past due, in whole or in part, on any debt obligation;

(B) Within the previous 24 months, the borrower has not been 60 days or more past due, in whole or in part, on any debt obligation;

(C) Within the previous 36 months, the borrower has not:

(*1*) Been a debtor in a proceeding commenced under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Family Farmer or Family Fisherman plan), or Chapter 13 (Individual Debt Adjustment) of the U.S. Bankruptcy Code; or

(*2*) Been the subject of any federal or State judicial judgment for the collection of any unpaid debt;

(D) Within the previous 36 months, no one-to-four family property owned by the borrower has been the subject of any foreclosure, deed in lieu of foreclosure, or short sale; or

(E) Within the previous 36 months, the borrower has not had any personal property repossessed;

(ii) Determined and documented that the borrower has at least 24 months of credit history; and

(iii) Determined and documented that, upon the origination of the loan, the borrower's DTI ratio is less than or equal to 36 percent.

(A) For the purpose of making the determination under paragraph (a)(1)(iii) of this section, the originator must:

(*1*) Verify and document all income of the borrower that the originator includes in the borrower's effective monthly income (using payroll stubs, tax returns, profit and loss statements, or other similar documentation); and

(*2*) On or after the date of the borrower's written application and prior to origination, obtain a credit report regarding the borrower from a consumer reporting agency that compiles and maintain files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p)) and verify that all outstanding debts reported in the borrower's credit report are incorporated into the calculation of the borrower's DTI ratio under paragraph (a)(1)(iii) of this section;

(2) An originator will be deemed to have met the requirements of paragraph (a)(1)(i) of this section if:

(i) The originator, no more than 30 days before the closing of the loan, obtains a credit report regarding the borrower from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (within the meaning of 15 U.S.C. 1681a(p));

(ii) Based on the information in such credit report, the borrower meets all of the requirements of paragraph (a)(1)(i) of this section, and no information in a credit report subsequently obtained by the originator before the closing of the loan contains contrary information; and

(iii) The originator obtains electronic or hard copies of the credit report.

(3) At closing of the automobile loan, the borrower makes a down payment from the borrower's personal funds and trade-in allowance, if any, that is at least equal to the sum of:

(i) The full cost of the vehicle title, tax, and registration fees;

(ii) Any dealer-imposed fees;

(iii) The full cost of any additional warranties, insurance or other products purchased in connection with the purchase of the vehicle; and

(iv) 10 percent of the vehicle purchase price.

(4) The originator records a first lien securing the loan on the purchased vehicle in accordance with State law.

(5) The terms of the loan agreement provide a maturity date for the loan that does not exceed the lesser of:

(i) Six years from the date of origination; or

(ii) 10 years minus the difference between the current model year and the vehicle's model year.

(6) The terms of the loan agreement:

(i) Specify a fixed rate of interest for the life of the loan;

(ii) Provide for a level monthly payment amount that fully amortizes the amount financed over the loan term;

(iii) Do not permit the borrower to defer repayment of principal or payment of interest; and

(iv) Require the borrower to make the first payment on the automobile loan within 45 days of the loan's contract date.

(7) At the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction, all payments due on the loan are contractually current; and

(8)(i) The depositor of the asset-backed security certifies that it has evaluated the effectiveness of its internal supervisory controls with respect to the process for ensuring that all qualifying automobile loans that collateralize the asset-backed security and that reduce the sponsor's risk retention requirement under § __.15 meet all of the requirements set forth in paragraphs (a)(1) through (7) of this section and has concluded that its internal supervisory controls are effective;

(ii) The evaluation of the effectiveness of the depositor's internal supervisory controls referenced in paragraph (a)(8)(i) of this section shall be performed, for each issuance of an asset-backed security, as of a date within 60 days of the cut-off date or similar date for establishing the composition of the asset pool collateralizing such asset-backed security; and

(iii) The sponsor provides, or causes to be provided, a copy of the certification described in paragraph (a)(8)(i) of this section to potential investors a reasonable period of time prior to the sale of asset-backed securities in the issuing entity, and, upon request, to its appropriate Federal banking agency, if any.

(b) *Cure or buy-back requirement.* If a sponsor has relied on the exception provided in § ___.15 with respect to a qualifying automobile loan and it is subsequently determined that the loan did not meet all of the requirements set forth in paragraphs (a)(1) through (7) of this section, the sponsor shall not lose the benefit of the exception with respect to the automobile loan if the depositor complied with the certification requirement set forth in paragraph (a)(8) of this section, and:

(1) The failure of the loan to meet any of the requirements set forth in paragraphs (a)(1) through (7) of this section is not material; or

(2) No later than ninety (90) days after the determination that the loan does not meet one or more of the requirements of paragraphs (a)(1) through (7) of this section, the sponsor:

(i) Effectuates cure, establishing conformity of the loan to the unmet requirements as of the date of cure; or

(ii) Repurchases the loan(s) from the issuing entity at a price at least equal to the remaining principal balance and accrued interest on the loan(s) as of the date of repurchase.

(3) If the sponsor cures or repurchases pursuant to paragraph (b)(2) of this section, the sponsor must promptly notify, or cause to be notified, the holders of the asset-backed securities issued in the securitization transaction of any loan(s) included in such securitization transaction that is required to be cured or repurchased by the sponsor pursuant to paragraph (b)(2) of this section, including the principal amount of such loan(s) and the cause for such cure or repurchase.

§ __.19 General exemptions.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

Community-focused residential mortgage means a residential mortgage exempt from the definition of ''covered transaction'' under § 1026.43(a)(3)(iv) and (v) of the CFPB's Regulation Z (12 CFR 1026.43(a)).

First pay class means a class of ABS interests for which all interests in the class are entitled to the same priority of payment and that, at the time of closing of the transaction, is entitled to repayments of principal and payments of interest prior to or pro-rata with all other classes of securities collateralized by the same pool of first-lien residential mortgages, until such class has no principal or notional balance remaining.

Inverse floater means an ABS interest issued as part of a securitization transaction for which interest or other income is payable to the holder based on a rate or formula that varies inversely to a reference rate of interest.

Qualifying three-to-four unit residential mortgage loan means a mortgage loan that is:

(i) Secured by a dwelling (as defined in 12 CFR 1026.2(a)(19)) that is owner occupied and contains three-to-four housing units;

(ii) Is deemed to be for business purposes for purposes of Regulation Z under 12 CFR part 1026, Supplement I, paragraph 3(a)(5)(i); and

(iii) Otherwise meets all of the requirements to qualify as a qualified mortgage under § 1026.43(e) and (f) of Regulation Z (12 CFR 1026.43(e) and (f)) as if the loan were a covered transaction under that section.

(b) This part shall not apply to:

(1) *U.S. Government-backed securitizations.* Any securitization transaction that:

(i) Is collateralized solely by residential, multifamily, or health care facility mortgage loan assets that are insured or guaranteed (in whole or in part) as to the payment of principal and interest by the United States or an agency of the United States, and servicing assets; or

(ii) Involves the issuance of asset-backed securities that:

(A) Are insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States; and

(B) Are collateralized solely by residential, multifamily, or health care facility mortgage loan assets or interests in such assets, and servicing assets.

(2) *Certain agricultural loan securitizations.* Any securitization transaction that is collateralized solely by loans or other assets made, insured, guaranteed, or purchased by any institution that is subject to the supervision of the Farm Credit Administration, including the Federal Agricultural Mortgage Corporation, and servicing assets;

(3) *State and municipal securitizations.* Any asset-backed security that is a security issued or guaranteed by any State, or by any political subdivision of a State, or by any public instrumentality of a State that is exempt from the registration requirements of the Securities Act of 1933 by reason of section 3(a)(2) of that Act (15 U.S.C. 77c(a)(2)); and

(4) *Qualified scholarship funding bonds.* Any asset-backed security that meets the definition of a qualified scholarship funding bond, as set forth in section 150(d)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 150(d)(2)).

(5) *Pass-through resecuritizations.* Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by asset-backed securities:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That were exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Is structured so that it involves the issuance of only a single class of ABS interests; and

(iii) Provides for the pass-through of all principal and interest payments received on the underlying asset-backed securities (net of expenses of the issuing entity) to the holders of such class.

(6) *First-pay-class securitizations.* Any securitization transaction that:

(i) Is collateralized solely by servicing assets, and by first-pay classes of asset-backed securities collateralized by first-lien residential mortgages on properties located in any state:

(A) For which credit risk was retained as required under subpart B of this part; or

(B) That were exempted from the credit risk retention requirements of this part pursuant to subpart D of this part;

(ii) Does not provide for any ABS interest issued in the securitization transaction to share in realized principal losses other than pro rata with all other ABS interests issued in the securitization transaction based on the current unpaid principal balance of such ABS interests at the time the loss is realized;

(iii) Is structured to reallocate prepayment risk;

(iv) Does not reallocate credit risk (other than as a consequence of reallocation of prepayment risk); and

(v) Does not include any inverse floater or similarly structured ABS interest.

(7) *Seasoned loans.* (i) Any securitization transaction that is collateralized solely by servicing assets, and by seasoned loans that meet the following requirements:

(A) The loans have not been modified since origination; and

(B) None of the loans have been delinquent for 30 days or more.

(ii) For purposes of this paragraph, a *seasoned loan* means:

(A) With respect to asset-backed securities collateralized by residential mortgages, a loan that has been outstanding and performing for the longer of:

(*1*) A period of five years; or

(*2*) Until the outstanding principal balance of the loan has been reduced to 25 percent of the original principal balance.

(*3*) Notwithstanding paragraphs (b)(7)(ii)(A)(*1*) and (*2*) of this section, any residential mortgage loan that has been outstanding and performing for a period of at least seven years shall be deemed a seasoned loan.

(B) With respect to all other classes of asset-backed securities, a loan that has been outstanding and performing for the longer of:

(*1*) A period of at least two years; or

(*2*) Until the outstanding principal balance of the loan has been reduced to 33 percent of the original principal balance.

(8) *Certain public utility securitizations.* (i) Any securitization transaction where the asset-back securities issued in the transaction are secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of an issuing entity that is wholly owned, directly or indirectly, by an investor owned utility company that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

(ii) For purposes of this paragraph:

(A) *Specified cost* means any cost identified by a State legislature as appropriate for recovery through securitization pursuant to specified cost recovery legislation; and

(B) *Specified cost recovery legislation* means legislation enacted by a State that:

(*1*) Authorizes the investor owned utility company to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;

(*2*) Provides that pursuant to a financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party; and

(*3*) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation.

(c) *Exemption for securitizations of assets issued, insured or guaranteed by the United States.* This part shall not apply to any securitization transaction if the asset-backed securities issued in the transaction are:

(1) Collateralized solely by obligations issued by the United States or an agency

of the United States and servicing assets;

(2) Collateralized solely by assets that are fully insured or guaranteed as to the payment of principal and interest by the United States or an agency of the United States (other than those referred to in paragraph (b)(1)(i) of this section) and servicing assets; or

(3) Fully guaranteed as to the timely payment of principal and interest by the United States or any agency of the United States;

(d) *Federal Deposit Insurance Corporation securitizations.* This part shall not apply to any securitization transaction that is sponsored by the Federal Deposit Insurance Corporation acting as conservator or receiver under any provision of the Federal Deposit Insurance Act or of Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(e) *Reduced requirement for certain student loan securitizations.* The 5 percent risk retention requirement set forth in § __.4 shall be modified as follows:

(1) With respect to a securitization transaction that is collateralized solely by student loans made under the Federal Family Education Loan Program (''FFELP loans'') that are guaranteed as to 100 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 0 percent;

(2) With respect to a securitization transaction that is collateralized solely by FFELP loans that are guaranteed as to at least 98 percent but less than 100 percent of defaulted principal and accrued interest, and servicing assets, the risk retention requirement shall be 2 percent; and

(3) With respect to any other securitization transaction that is collateralized solely by FFELP loans, and servicing assets, the risk retention requirement shall be 3 percent.

(f) *Community-focused lending securitizations.* (1) This part shall not apply to any securitization transaction if the asset-backed securities issued in the transaction are collateralized solely by community-focused residential mortgages and servicing assets.

(2) For any securitization transaction that includes both community-focused residential mortgages and residential mortgages that are not exempt from risk retention under this part, the percent of risk retention required under § __.4(a) is reduced by the ratio of the unpaid principal balance of the community-focused residential mortgages to the total unpaid principal balance of residential mortgages that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the community-focused residential mortgage asset ratio); provided that:

(i) The community-focused residential mortgage asset ratio is measured as of the cut-off date or similar date for establishing the composition of the pool assets collateralizing the asset-backed securities issued pursuant to the securitization transaction; and

(ii) If the community-focused residential mortgage asset ratio would exceed 50 percent, the community-focused residential mortgage asset ratio shall be deemed to be 50 percent.

(g) *Exemptions for securitizations of certain three-to-four unit mortgage loans.* A sponsor shall be exempt from the risk retention requirements in subpart B of this part with respect to any securitization transaction if:

(1)(i) The asset-backed securities issued in the transaction are collateralized solely by qualifying three-to-four unit residential mortgage loans and servicing assets; or

(ii) The asset-backed securities issued in the transaction are collateralized solely by qualifying three-to-four unit residential mortgage loans, qualified residential mortgages as defined in § __.13, and servicing assets.

(2) The depositor with respect to the securitization provides the certifications set forth in § __.13(b)(4) with respect to the process for ensuring that all assets that collateralize the asset-backed securities issued in the transaction are qualifying three-to-four unit residential mortgage loans, qualified residential mortgages, or servicing assets; and

(3) The sponsor of the securitization complies with the repurchase requirements in § __.13(c) with respect to a loan if, after closing, it is determined that the loan does not meet all of the criteria to be either a qualified residential mortgage or a qualifying three-to-four unit residential mortgage loan, as appropriate.

(h) *Rule of construction.* Securitization transactions involving the issuance of asset-backed securities that are either issued, insured, or guaranteed by, or are collateralized by obligations issued by, or loans that are issued, insured, or guaranteed by, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal home loan bank shall not on that basis qualify for exemption under this part.

§ __.20 Safe harbor for certain foreign-related transactions.

(a) *Definitions.* For purposes of this section, the following definition shall apply:

U.S. person means:

(i) Any of the following:

(A) Any natural person resident in the United States;

(B) Any partnership, corporation, limited liability company, or other organization or entity organized or incorporated under the laws of any State or of the United States;

(C) Any estate of which any executor or administrator is a U.S. person (as defined under any other clause of this definition);

(D) Any trust of which any trustee is a U.S. person (as defined under any other clause of this definition);

(E) Any agency or branch of a foreign entity located in the United States;

(F) Any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person (as defined under any other clause of this definition);

(G) Any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the United States; and

(H) Any partnership, corporation, limited liability company, or other organization or entity if:

(*1*) Organized or incorporated under the laws of any foreign jurisdiction; and

(*2*) Formed by a U.S. person (as defined under any other clause of this definition) principally for the purpose of investing in securities not registered under the Act; and

(ii) ''U.S. person(s)'' does not include:

(A) Any discretionary account or similar account (other than an estate or trust) held for the benefit or account of a person not constituting a U.S. person (as defined in paragraph (i) of this section) by a dealer or other professional fiduciary organized, incorporated, or (if an individual) resident in the United States;

(B) Any estate of which any professional fiduciary acting as executor or administrator is a U.S. person (as defined in paragraph (i) of this section) if:

(*1*) An executor or administrator of the estate who is not a U.S. person (as defined in paragraph (i) of this section) has sole or shared investment discretion with respect to the assets of the estate; and

(*2*) The estate is governed by foreign law;

(C) Any trust of which any professional fiduciary acting as trustee is a U.S. person (as defined in paragraph (i) of this section), if a trustee who is not a U.S. person (as defined in paragraph (i) of this section) has sole or shared investment discretion with respect to the trust assets, and no beneficiary of the trust (and no settlor if the trust is revocable) is a U.S. person (as defined in paragraph (i) of this section);

(D) An employee benefit plan established and administered in accordance with the law of a country other than the United States and customary practices and documentation of such country;

(E) Any agency or branch of a U.S. person (as defined in paragraph (i) of this section) located outside the United States if:

(*1*) The agency or branch operates for valid business reasons; and

(*2*) The agency or branch is engaged in the business of insurance or banking and is subject to substantive insurance or banking regulation, respectively, in the jurisdiction where located;

(F) The International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the United Nations, and their agencies, affiliates and pension plans, and any other similar international organizations, their agencies, affiliates and pension plans.

(b) *In general.* This part shall not apply to a securitization transaction if all the following conditions are met:

(1) The securitization transaction is not required to be and is not registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*);

(2) No more than 10 percent of the dollar value (or equivalent amount in the currency in which the ABS interests are issued, as applicable) of all classes of ABS interests in the securitization transaction are sold or transferred to U.S. persons or for the account or benefit of U.S. persons;

(3) Neither the sponsor of the securitization transaction nor the issuing entity is:

(i) Chartered, incorporated, or organized under the laws of the United States or any State;

(ii) An unincorporated branch or office (wherever located) of an entity chartered, incorporated, or organized under the laws of the United States or any State; or

(iii) An unincorporated branch or office located in the United States or any State of an entity that is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State; and

(4) If the sponsor or issuing entity is chartered, incorporated, or organized under the laws of a jurisdiction other than the United States or any State, no more than 25 percent (as determined based on unpaid principal balance) of the assets that collateralize the ABS interests sold in the securitization transaction were acquired by the sponsor or issuing entity, directly or indirectly, from:

(i) A majority-owned affiliate of the sponsor or issuing entity that is chartered, incorporated, or organized under the laws of the United States or any State; or

(ii) An unincorporated branch or office of the sponsor or issuing entity that is located in the United States or any State.

(c) *Evasions prohibited.* In view of the objective of these rules and the policies underlying Section 15G of the Exchange Act, the safe harbor described in paragraph (b) of this section is not available with respect to any transaction or series of transactions that, although in technical compliance with paragraphs (a) and (b) of this section, is part of a plan or scheme to evade the requirements of section 15G and this Part. In such cases, compliance with section 15G and this part is required.

§ __.21 Additional exemptions.

(a) *Securitization transactions.* The federal agencies with rulewriting authority under section 15G(b) of the Exchange Act (15 U.S.C. 78o-11(b)) with respect to the type of assets involved may jointly provide a total or partial exemption of any securitization transaction as such agencies determine may be appropriate in the public interest and for the protection of investors.

(b) *Exceptions, exemptions, and adjustments.* The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, may jointly adopt or issue exemptions, exceptions or adjustments to the requirements of this part, including exemptions, exceptions or adjustments for classes of institutions or assets in accordance with section 15G(e) of the Exchange Act (15 U.S.C. 78o-11(e)).

§ __.22 Periodic review of the QRM definition, exempted three-to-four unit residential mortgage loans, and community-focused residential mortgage exemption

(a) The Federal banking agencies and the Commission, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall commence a review of the definition of qualified residential mortgage in § __.13, a review of the community-focused residential mortgage exemption in § ___.19(f), and a review of the exemption for qualifying three-to-four unit residential mortgage loans in § ____.19(g):

(1) No later than four years after the effective date of the rule (as it relates to securitizers and originators of asset-backed securities collateralized by residential mortgages), five years following the completion of such initial review, and every five years thereafter; and

(2) At any time, upon the request of any Federal banking agency, the Commission, the Federal Housing Finance Agency or the Department of Housing and Urban Development, specifying the reason for such request, including as a result of any amendment to the definition of qualified mortgage or changes in the residential housing market.

(b) The Federal banking agencies, the Commission, the Federal Housing Finance Agency and the Department of Housing and Urban Development shall publish in the **Federal Register** notice of the commencement of a review and, in the case of a review commenced under paragraph (a)(2) of this section, the reason an agency is requesting such review. After completion of any review, but no later than six months after the publication of the notice announcing the review, unless extended by the agencies, the agencies shall jointly publish a notice disclosing the determination of their review. If the agencies determine to amend the definition of qualified residential mortgage, the agencies shall complete any required rulemaking within 12 months of publication in the **Federal Register** of such notice disclosing the determination of their review, unless extended by the agencies.

End of Common Rule

List of Subjects

12 CFR Part 43

Automobile loans, Banks and banking, Commercial loans, Commercial real estate, Credit risk, Mortgages, National banks, Reporting and recordkeeping requirements, Risk retention, Securitization.

12 CFR Part 244

Auto loans, Banks and banking, Bank holding companies, Commercial loans, Commercial real estate, Credit risk, Edge and agreement corporations, Foreign banking organizations, Mortgages, Nonbank financial companies, Reporting and recordkeeping requirements, Risk retention, Savings and loan holding companies, Securitization, State member banks.

12 CFR Part 373

Automobile loans, Banks and banking, Commercial loans, Commercial real estate, Credit risk, Mortgages, Reporting and recordkeeping requirements, Risk retention, Savings associations, Securitization.

12 CFR Part 1234

Government sponsored enterprises, Mortgages, Securities.

17 CFR Part 246

Reporting and recordkeeping requirements, Securities.

24 CFR Part 267

Mortgages.

Adoption of the Common Rule Text

The adoption of the common rule, 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

Authority and Issuance

For the reasons stated in the common preamble and under the authority of 12 U.S.C. 93a, 1464, 5412(b)(2)(B), and 15 U.S.C. 78o-11, the Office of the Comptroller of the Currency is adopting the text of the common rule as set forth at the end of the Supplementary Information as part 43, chapter I of title 12, Code of Federal Regulations, and further amends part 43 as follows:

PART 43—CREDIT RISK RETENTION

■ 1. The authority citation for part 43 is added to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 93a, 161, 1464, 1818, 5412(b)(2)(B), and 15 U.S.C. 78o-11.

■ 2. Section 43.1 is added to read as follows:

§ 43.1 Authority, purpose, scope, and reservation of authority.

(a) *Authority.* This part is issued under the authority of 12 U.S.C. 1 *et seq.,* 93a, 161, 1464, 1818, 5412(b)(2)(B), and 15 U.S.C. 78o-11.

(b) *Purpose.* (1) This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards.

(2) Nothing in this part shall be read to limit the authority of the OCC to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, or violations of law.

(c) *Scope.* This part applies to any securitizer that is a national bank, a Federal savings association, a Federal branch or agency of a foreign bank, or a subsidiary thereof.

(d) *Compliance dates.* Compliance with this part is required:

(1) With respect to any securitization transaction collateralized by residential mortgages, on and after December 24, 2015; and

(2) With respect to any other securitization transaction, on and after December 24, 2016.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Board of Governors of the Federal Reserve System is adopting the text of the common rule as set forth at the end of the Supplementary Information as part 244 to chapter II of title 12, Code of Federal Regulations, and further amends part 244 as follows:

PART 244—CREDIT RISK RETENTION (REGULATION RR)

■ 3. The authority citation for part 244 is added to read as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1461 *et seq.,* 1818, 1841 *et seq.,* 3103 *et seq.,* and 15 U.S.C. 78o–11.

■ 4. The part heading for part 244 is revised to read as set forth above.

■ 5. Section 244.1 is added to read as follows:

§ 244.1 Authority, purpose, and scope.

(a) *Authority.* (1) *In general.* This part (Regulation RR) is issued by the Board of Governors of the Federal Reserve System under section 15G of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78o–11), 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 (FDI Act), as amended (12 U.S.C. 1818); the Bank Holding Company Act of 1956, as amended (BHC Act) (12 U.S.C. 1841 *et seq.*); the Home Owners' Loan Act of 1933 (HOLA) (12 U.S.C. 1461 *et seq.*); section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (12 U.S.C. 5365); and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(2) Nothing in this part shall be read to limit the authority of the Board to take action under provisions of law other than 15 U.S.C. 78o–11, including action to address unsafe or unsound practices or conditions, or violations of law or regulation, under section 8 of the FDI Act.

(b) *Purpose.* This part requires any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(c) *Scope.* (1) This part applies to any securitizer that is:

(i) A state member bank (as defined in 12 CFR 208.2(g)); or

(ii) Any subsidiary of a state member bank.

(2) Section 15G of the Exchange Act and the rules issued thereunder apply to any securitizer that is:

(i) A bank holding company (as defined in 12 U.S.C. 1842);

(ii) A foreign banking organization (as defined in 12 CFR 211.21(o));

(iii) An Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3));

(iv) A nonbank financial company that the Financial Stability Oversight Council has determined under section 113 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (the Dodd–Frank Act) (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect; or

(v) A savings and loan holding company (as defined in 12 U.S.C. 1467a); and

(vi) Any subsidiary of the foregoing.

(3) Compliance with this part is required:

(i) With respect to any securitization transaction collateralized by residential mortgages on December 24, 2015; and

(ii) With respect to any other securitization transaction on December 24, 2016.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information, the Federal

Deposit Insurance Corporation adds the text of the common rule as set forth at the end of the Supplementary Information as part 373 to chapter III of title 12, Code of Federal Regulations, and further amends part 373 as follows:

PART 373—CREDIT RISK RETENTION

■ 6. The authority citation for part 373 is added to read as follows:

Authority: 12 U.S.C. 1811 *et seq.* and 3103 *et seq.,* and 15 U.S.C. 78o–11.

■ 7. Section 373.1 is added to read as follows:

§ 373.1 Purpose and scope.

(a) *Authority.* (1) *In general.* This part is issued by the Federal Deposit Insurance Corporation (FDIC) under section 15G of the Securities Exchange Act of 1934, as amended (Exchange Act) (15 U.S.C. 78o–11), as well as the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) and the International Banking Act of 1978, as amended (12 U.S.C. 3101 *et seq.*).

(2) Nothing in this part shall be read to limit the authority of the FDIC to take action under provisions of law other than 15 U.S.C. 78o–11, including to address unsafe or unsound practices or conditions, or violations of law or regulation under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

(b) *Purpose.* This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(c) *Scope.* This part applies to any securitizer that is:

(1) A state nonmember bank (as defined in 12 U.S.C. 1813(e)(2));

(2) An insured state branch of a foreign bank (as defined in 12 CFR 347.202);

(3) A state savings association (as defined in 12 U.S.C. 1813(b)(3)); or

(4) Any subsidiary of an entity described in paragraph (c)(1), (2), or (3) of this section.

Federal Housing Finance Agency

12 CFR Chapter XII

Authority and Issuance

For the reasons stated in the Supplementary Information, and under the authority of 12 U.S.C. 4526, the Federal Housing Finance Agency is adopting the text of the common rule as set forth at the end of the Supplementary Information as part 1234 of subchapter B of chapter XII of title 12 of the Code of Federal Regulations, and further amends part 1234 as follows:

PART 1234—CREDIT RISK RETENTION

■ 8. The authority citation for part 1234 is added to read as follows:

Authority: 12 U.S.C. 4511(b), 4526, 4617; 15 U.S.C. 78o–11(b)(2).

■ 9. Section 1234.1 is added to read as follows:

§ 1234.1 Purpose, scope and reservation of authority.

(a) *Purpose.* This part requires securitizers to retain an economic interest in a portion of the credit risk for any residential mortgage asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party in a transaction within the scope of section 15G of the Exchange Act. This part specifies the permissible types, forms, and amounts of credit risk retention, and it establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or that otherwise qualify for an exemption.

(b) *Scope.* (1) Effective December 24, 2015, this part will apply to any securitizer that is an entity regulated by the Federal Housing Finance Agency with respect to a securitization transaction collateralized by residential mortgages.

(2) Effective December 24, 2016, this part will apply to any securitizer that is an entity regulated by the Federal Housing Finance Agency with respect to a securitization transaction collateralized by assets other than residential mortgages.

(c) *Reservation of authority.* Nothing in this part shall be read to limit the authority of the Director of the Federal Housing Finance Agency to take supervisory or enforcement action, including action to address unsafe or unsound practices or conditions, or violations of law.

■ 10. Amend § 1234.14 as follows:

■ a. Revise the section heading;

■ b. In the introductory text, remove the reference ‘‘§§ 1234.15 through 1234.18’’ and add in its place the reference ‘‘§§ 1234.15 and 1234.17’’;

■ c. Remove the definitions of ‘‘Automobile loan’’, ‘‘Commercial loan’’, ‘‘Debt to income (DTI) ratio’’, ‘‘Earnings before interest, taxes, depreciation, and amortization (EBITDA)’’, ‘‘Leverage Ratio’’, ‘‘Model year’’, ‘‘Payments-in-kind’’, ‘‘Purchase price’’, ‘‘Salvage title’’, ‘‘Total debt’’, ‘‘Total liabilities ratio’’, and ‘‘Trade-in allowance’’; and

■ d. Revise the definition of ‘‘Debt service coverage (DSC) ratio’’.

The revisions read as follows:

§ 1234.14 Definitions applicable to qualifying commercial real estate loans.

* * * * *

Debt service coverage (DSC) ratio means the ratio of:

(1) The annual NOI less the annual replacement reserve of the CRE property at the time of origination of the CRE loan(s); to

(2) The sum of the borrower's annual payments for principal and interest (calculated at the fully indexed rate) on any debt obligation.

* * * * *

■ 11. Revise § 1234.15 to read as follows:

§ 1234.15 Qualifying commercial real estate loans.

(a) *General exception.* Commercial real estate loans that are securitized through a securitization transaction shall be subject to a 0 percent risk retention requirement under subpart B of this part, provided that the following conditions are met:

(1) The CRE assets meet the underwriting standards set forth in § 1234.17;

(2) The securitization transaction is collateralized solely by CRE loans and by servicing assets;

(3) The securitization transaction does not permit reinvestment periods; and

(4) The sponsor provides, or causes to be provided, to potential investors a reasonable period of time prior to the sale of asset-backed securities of the issuing entity, and, upon request, to the Commission, and to the FHFA, in written form under the caption ‘‘Credit Risk Retention’’ a description of the manner in which the sponsor determined the aggregate risk retention requirement for the securitization transaction after including qualifying CRE loans with 0 percent risk retention.

(b) *Risk retention requirement.* For any securitization transaction described in paragraph (a) of this section, the percentage of risk retention required under § 1234.3(a) is reduced by the percentage evidenced by the ratio of the unpaid principal balance of the qualifying CRE loans to the total unpaid principal balance of CRE loans that are included in the pool of assets collateralizing the asset-backed securities issued pursuant to the securitization transaction (the qualifying asset ratio); provided that;

(1) The qualifying asset ratio is measured as of the cut-off date or similar date for establishing the composition of the securitized assets collateralizing the asset-backed securities issued pursuant to the securitization transaction;

(2) If the qualifying asset ratio would exceed 50 percent, the qualifying asset ratio shall be deemed to be 50 percent; and

(3) The disclosure required by paragraph (a)(4) of this section also includes descriptions of the qualifying CRE loans and descriptions of the CRE loans that are not qualifying CRE loans, and the material differences between the group of qualifying CRE loans and CRE loans that are not qualifying loans with respect to the composition of each group's loan balances, loan terms, interest rates, borrower credit information, and characteristics of any loan collateral.

(c) *Exception for securitizations of qualifying CRE only.* Notwithstanding other provisions of this section, the risk retention requirements of subpart B of this part shall not apply to securitization transactions where the transaction is collateralized solely by servicing assets and qualifying CRE loans.

(d) Record maintenance. A regulated entity must retain the disclosures required in paragraphs (a) and (b) of this section and the certification required in § 1234.17(a)(10) of this part, in its records until three years after all ABS interests issued in the securitization are no longer outstanding. The regulated entity must provide the disclosures and certifications upon request to the Commission and the FHFA.

§§ 1234.16 and 1234.18 [Removed and Reserved]

■ 12. Remove and reserve §§ 1234.16 and 1234.18.

Securities and Exchange Commission

17 CFR Chapter II

Authority and Issuance

For the reasons stated in the Supplementary Information, the Securities and Exchange Commission is adopting the text of the common rule as set forth at the end of the Supplementary Information as part 246, title 17, chapter II of the Code of Federal Regulations, under the authority set forth in Sections 7, 10, 19(a), and 28 of the Securities Act and Sections 3, 13, 15, 15G, 23 and 36 of the Exchange Act, and further amends part 246 as follows:

PART 246—CREDIT RISK RETENTION

■ 13. The authority citation for part 246 is added to read as follows:

Authority: 15 U.S.C. 77g, 77j, 77s, 77z–3, 78c, 78m, 78o, 78o–11, 78w, 78mm.

■ 14. Section 246.1 is added to read as follows:

§ 246.1 Purpose, scope, and authority.

(a) *Authority and purpose.* This part (Regulation RR) is issued by the Securities and Exchange Commission (''Commission'') jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and, in the case of the securitization of any residential mortgage asset, together with the Secretary of Housing and Urban Development and the Federal Housing Finance Agency, pursuant to Section 15G of the Securities Exchange Act of 1934 (15 U.S.C. 78o–11). The Commission also is issuing this part pursuant to its authority under Sections 7, 10, 19(a), and 28 of the Securities Act and Sections 3, 13, 15, 23, and 36 of the Exchange Act. This part requires securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party. This part specifies the permissible types, forms, and amounts of credit risk retention, and establishes certain exemptions for securitizations collateralized by assets that meet specified underwriting standards or otherwise qualify for an exemption.

(b) The authority of the Commission under this part shall be in addition to the authority of the Commission to otherwise enforce the federal securities laws, including, without limitation, the antifraud provisions of the securities laws.

Department of Housing and Urban Development

24 CFR Chapter II

Authority and Issuance

For the reasons stated in the preamble, HUD is adopting the text of the common rule as set forth at the end of the Supplementary Information as 24 CFR part 267, and further amends part 267 as follows:

PART 267—CREDIT RISK RETENTION

■ 15. The authority citation for part 267 is added to read as follows:

Authority: 15 U.S.C. 78–o–11; 42 U.S.C. 3535(d).

■ 16. Section 267.1 is added to read as follows:

§ 267.1 Credit risk retention exceptions and exemptions for HUD programs.

The credit risk retention regulations codified at 12 CFR part 43 (Office of the Comptroller of the Currency); 12 CFR part 244 (Federal Reserve System); 12 CFR part 373 (Federal Deposit Insurance Corporation); 17 CFR part 246 (Securities and Exchange Commission); and 12 CFR part 1234 (Federal Housing Finance Agency) include exceptions and exemptions in subpart D of each of these codified regulations for certain transactions involving programs and entities under the jurisdiction of the Department of Housing and Urban Development.

Dated: October 21, 2014.

Thomas J. Curry,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 23, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 21st day of October, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 22, 2014.

By the Securities and Exchange Commission.

Kevin M. O'Neill,

Deputy Secretary.

Dated: October 21, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

By the Department of Housing and Urban Development.

Julián Castro,

Secretary.

[FR Doc. 2014–29256 Filed 12–23–14; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8010–01–P; 8070–01–P

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Part III

Department of Health and Human Services

Administration for Children and Families

45 CFR Part 411

Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 411

RIN 0970–AC61

Standards To Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule (IFR).

SUMMARY: This IFR proposes standards and procedures to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied children (UCs) in ORR's care provider facilities.

DATES: This IFR is effective on December 24, 2014. ORR care provider facilities must be in compliance with this IFR by June 24, 2015 but encourages care provider facilities to be in compliance sooner, if possible. HHS will work with facilities to implement and enforce the standards contained in this rule. Comments on this IFR must be received on or before February 23, 2015.

ADDRESSES: Interested persons are invited to submit comments to the Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 8th Floor West, Washington, DC 20024, Attention: Elizabeth Sohn, or electronically via the Internet at *http://www.regulations.gov.* If you submit a comment, please include your name and address, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this IFR may be downloaded from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Sohn, Policy Analyst, Division of Policy, Office of Refugee Resettlement, Administration for Children and Families by email at *UACPolicy@acf.hhs.gov* or by phone at (202) 260–6829. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Contents

I. Submission of Comments

Comments should be specific, address issues raised by the interim final rule, propose alternatives where appropriate, explain reasons for any objections or recommended changes, and reference the specific action of the interim final rule that is being addressed. Additionally, we will be interested in comments that indicate agreement with proposed policies. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the Final Rule.

II. Executive Summary

This interim final rule provides standards to prevent, detect, and respond to sexual abuse and sexual harassment in Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR) care provider facilities housing unaccompanied children[1] (UCs). Sexual violence and abuse are an assault on human dignity and have devastating, lifelong mental and physical effects on an individual. HHS is committed to an absolute zero tolerance policy against sexual abuse and sexual harassment in its care provider facilities and seeks to ensure the safety and security of all UCs in its care.

The standards set forth in this interim final rule build on the ORR UC Program policies and procedures and respond to section 1101(c) of the Violence Against Women Reauthorization Act of 2013, Pub. L. 113–4 (VAWA 2013). VAWA 2013 directs the Secretary of HHS to issue ''a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody'' of unaccompanied children.

ORR carefully considered all recommendations made by the National Prison Rape Elimination Commission's (NPREC) report in developing this rule, which covers the eleven categories used by the NPREC to discuss and evaluate prison rape prevention and elimination standards. The eleven categories include: prevention planning, responsive planning, training and education, assessment for risk of sexual victimization and abusiveness, reporting, official response following a UC report, ORR incident monitoring and evaluation, interventions and discipline, medical and mental care, data collection and review, and audits and corrective actions. HHS tailored each provision under these categories to the UC population and the nature of ORR care provider facilities, which differ greatly from typical confinement facilities and prisons. Most ORR care provider facilities are shelters, group homes, and residential therapeutic centers. The standards were modified to protect children and be culturally sensitive, given the background of most UCs.

III. Background

Congress passed the Prison Rape Elimination Act (PREA), Pub. L. 108–79, in July 2003 in order to address the often overlooked crime of rape in Federal, State, and local prisons and to

[1] This interim final rule uses the term ''unaccompanied child'' in place of the statutory term ''unaccompanied alien child,'' but it retains the statutory meaning. An unaccompanied alien child is defined in Section 462(g)(2) of the Homeland Security Act of 2002 as a child: (1) Who has no lawful immigration status in the United States; (2) who has not reached 18 years of age; and (3) with respect to whom there is no parent or legal guardian in the United States or there is no parent or legal guardian in the United States available to provide care and physical custody. 6 U.S.C. 279(g)(2).

analyze the incidence and effect of prison rape in order to provide information, resources, recommendations, and funding to protect individuals from the crime. Some of the key purposes of the statute were to ''develop and implement national standards for the detection, prevention, reduction, and punishment of prison rape,'' and to ''increase the available data and information on the incidence of prison rape.'' 42 U.S.C. 15602(3)–(4). PREA defines the term ''prison'' to mean ''any confinement facility of a Federal, State, or local government, whether administered by such government or by a private organization on behalf of such government, and includes (A) any local jail or police lockup; and (B) any juvenile facility used for the custody or care of juvenile inmates.'' 42 U.S.C. 15609(7). The term ''inmate'' is defined in PREA to mean ''any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.'' 42 U.S.C. 15609(2).

PREA established the National Prison Rape Elimination Commission (NPREC) to ''carry out a comprehensive legal and factual study of the penalogical, physical, mental, medical, social, and economic impacts of prison rape in the United States'' and to recommend to the Attorney General national standards for the reduction of prison rape. 42 U.S.C. 15606. The statute directed the Attorney General to publish a final rule adopting ''national standards for the detection, prevention, reduction, and punishment of prison rape . . . based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission . . . and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.'' 42 U.S.C. 15607(a)(1)–(2).

The NPREC released its recommended national standards in a report (the NPREC report) dated June 23, 2009. The NPREC's report and recommended national standards are available at *http://www.ncjrs.gov/pdffiles1/226680.pdf.* The NPREC set forth four sets of recommended national standards for eliminating prison rape and other forms of sexual abuse. Each set applied to one of four confinement settings: (1) adult prisons and jails; (2) juvenile facilities; (3) community corrections facilities; and (4) lockups. The NPREC report recommended supplemental standards for facilities with immigration detainees as well as tailored standards for facilities with juveniles.

A. Department of Justice Rulemaking

In response to the NPREC report, the Attorney General established a PREA Working Group to review each of the NPREC's proposed standards and to assist him in the rulemaking process. The Working Group included representatives from a wide range of DOJ components, including the Access to Justice Initiative, the Federal Bureau of Prisons (including the National Institute of Corrections), the Civil Rights Division, the Executive Office for United States Attorneys, the Office of Legal Policy, the Office of Legislative Affairs, the Office of Justice Programs (including the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime), the Office on Violence Against Women, and the United States Marshals Service. The Working Group conducted an in-depth review of the standards proposed by the NPREC, which included a number of listening sessions with key stakeholders.

On March 10, 2010, DOJ published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on the NPREC's proposed national standards. In general, commenters to the DOJ ANPRM supported the broad goals of PREA and the overall intent of the NPREC's recommendations. Commenters, however, were sharply divided as to the merits of a number of standards. Some commenters, particularly those whose responsibilities involve the care and custody of inmates or juvenile residents, expressed concern that the NPREC's recommended national standards implementing PREA would impose unduly burdensome costs on already tight State and local government budgets. Other commenters, particularly advocacy groups concerned with protecting the health and safety of inmates and juvenile residents, expressed concern that the NPREC's standards did not go far enough, and, therefore, would not fully achieve PREA's goals.

After reviewing public input on the ANPRM, DOJ published a Notice of Proposed Rulemaking (NPRM) on February 3, 2011 that proposed national PREA standards, solicited public comments, and posed 64 specific questions on the proposed standards and accompanying economic analysis.

DOJ received over 1,300 comments to the NPRM from a broad range of stakeholders. Commenters provided general assessments of the DOJ's efforts as well as specific and detailed recommendations regarding each standard. Following the NPRM's comment period, DOJ issued a final rule setting national standards to prevent, detect, and respond to prison rape at Federal, State, and, local confinement facilities. 77 FR 37106 (June 20, 2012). The final rule reflected a considered analysis of the public comments and a rigorous assessment of the estimated benefits and costs of full nationwide compliance with the standards.

B. Application of PREA Standards to Other Federal Confinement Facilities

DOJ's NPRM interpreted PREA as binding only on facilities operated by the Federal Bureau of Prisons and extended the standards to U.S. Marshals Service (USMS) facilities under other authorities of the Attorney General.[2] 76 FR 6248, 6265. Numerous commentators criticized this interpretation of the statute. In light of those comments, DOJ re-examined whether PREA extends to Federal facilities beyond those operated by DOJ and concluded that PREA does, in fact, encompass any Federal confinement facility ''whether administered by [the] government or by a private organization on behalf of such government.'' 42 U.S.C. 15609(7).

In its final rule, DOJ further concluded that, in general, each Federal department is accountable for and has the statutory authority to regulate the operations of its own facilities and, therefore, is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. 77 FR 37106, 37113. Thus, given each department's various statutory authorities to regulate conditions of confinement, DOJ stated that Federal departments with confinement facilities will work with the Attorney General to issue rules or procedures consistent with PREA.

C. The Presidential Memorandum on Implementing the Prison Rape Elimination Act

On May 17, 2012, the President issued a Presidential Memorandum confirming the goals of PREA and directing Federal agencies with confinement facilities to propose rules or procedures necessary to satisfy the requirements of PREA within 120 days of the Memorandum. In the Memorandum, the President

[2] While not ''binding'' on State and local facilities, both the DOJ's NPRM and the DOJ final rule ''applies'' to State and local facilities and facilities operated on their behalf. See 77 FR 37106, 37107.

established that sexual violence, against any victim, is an assault on human dignity and an affront to American values. The President stated that PREA encompasses all Federal confinement facilities, including those operated by executive departments and agencies other than DOJ, whether administered by the Federal Government or by a private organization on behalf of the Federal Government. In addition, the Memorandum states that each agency is responsible and accountable for the operations of its own confinement facilities, as each agency has extensive expertise regarding its own facilities, particularly those housing unique populations. Thus, each agency is best positioned to determine how to implement the Federal laws and rules that govern its own operations, the conduct of its own employees, and the safety of persons in its custody. To advance PREA's goals, the President directed all agencies with Federal confinement facilities to work with the Attorney General to propose any rules or procedures necessary to satisfy the requirements of PREA.

In response to the Presidential Memorandum, the Department of Homeland Security (DHS) issued a NPRM on standards to prevent, detect, and respond to sexual abuse and assault in confinement facilities in accordance with PREA on December 19, 2012. 77 FR 75300. DHS issued its PREA final rule on March 7, 2014. 79 FR 13100.

To implement the principles laid out in the Presidential Memorandum, ORR began drafting procedures appropriate for its care provider facilities. ORR maintains a continuum of care that ranges from group homes, shelters, therapeutic care provider facilities, and residential treatment centers. ORR also provides grants for a limited number of beds at State and local juvenile facilities to house a small population of UCs in secure placements. ORR refers to these facilities as ''secure care provider facilities.''

All non-secure ORR care provider facilities are subject to State and local licensing standards for juvenile residential facilities, unless they are operating on Federal property. All care provider facilities subject to State and local licensing standards will have outside entities in addition to ORR overseeing and regulating them. ORR care provider facilities are mostly group homes and shelters that provide a wide array of services. UCs move around freely in a supervised environment, and most care provider facilities do not maintain secure perimeters. Many care provider facilities are run by nonprofit-grantees and located in residential neighborhoods. UCs must be provided with a level of privacy like having personal clothes, personal effects, and privacy when changing, using the restroom, and showering. UCs receive daily educational services, weekly group and individual counseling, an individualized service plan, and many other services that follow accepted child welfare principles. HHS, with its expertise with child welfare issues and UC populations, has policies and procedures in place to protect the safety and security of UCs in accordance with State and local licensing standards, and includes many of the standards set forth by DOJ and DHS in their respective final rules.

ORR is strongly committed to protecting UCs from sexual abuse and sexual harassment and to follow the principles laid out in the Presidential Memorandum. ORR began creating and implementing a comprehensive training for all care provider facility staff on preventing and responding to sexual abuse and sexual harassment. As ORR's non-secure care provider facilities are not obligated to follow DOJ's rule, ORR also began drafting supplemental policies and procedures that applied many of the standards set forth by the DOJ rule and the NPREC's recommended standards modified for the UC population to these facilities. Finally, ORR directed all of its secure care providers to follow DOJ's final rule, since these facilities are State and local juvenile facilities. As of May 2013, less than 1.5 percent of ORR's UC total bed space is reserved for secure placement.

D. Violence Against Women Reauthorization Act of 2013

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Pub. L. 113–4, contained a provision applying PREA to custodial facilities operated by HHS. VAWA 2013 requires HHS to publish a final rule adopting national standards to prevent, detect, and respond to rape and sexual assault. These national standards are to apply to all care provider facilities that maintain custody of UCs as defined in the Homeland Security Act of 2002 (6 U.S.C. 279(g)) and give due consideration to the recommended national standards provided by the NPREC report. Additionally, HHS is required to regularly assess compliance with the standards adopted and include the results of the assessments in performance evaluations of care provider facilities.

In response to VAWA 2013, HHS is proposing the following standards for the prevention, detection, and response to sexual abuse and sexual harassment of UCs in all ORR care provider facilities, except secure care providers and traditional foster care homes as described in the rule.

IV. Discussion of the Interim Final Rule

A. ORR Standards

Sexual abuse and sexual harassment are an assault on human dignity and have devastating lifelong psychological and physical effects on an individual. ORR is committed to child welfare best practices and protecting the safety and security of UCs, and, therefore, has implemented a zero tolerance policy against sexual abuse and sexual harassment. Through the standards set forth below, ORR seeks to further articulate its expectations of care provider facilities to fully protect and prevent the sexual abuse and sexual harassment of UCs.

ORR reviewed and considered all NPREC recommended standards and focused on the standards for juvenile facilities and supplemental standards for immigration detainees in creating this rule. ORR also recognizes that DOJ and DHS have done a considerable amount of work to develop and implement policies and practices for use in confinement facilities. Thus, ORR used the framework created by the NPREC recommendations along with DOJ and DHS' respective rules in conjunction with its own expertise in child welfare issues and the UC population's specific needs to create its standards. ORR also had to consider the practicability of applying the standards to its care provider facilities, as all care provider facilities are grantees, sub-grantees, or contractors of ORR. ORR's standards ultimately seek to include child welfare best practices, other best practice standards, and applicability to ORR's continuum of care.

B. Section by Section Discussion

Sections 411.5 and 411.6 define key terms used in the standards set forth in this Part, including definitions related to sexual abuse and sexual harassment. Many of the definitions are the same as those found in the DOJ rule and the DHS rule. ORR also examined the definitions used by the NPREC and made adjustments for applicability to minors. Certain terms used by the NPREC, DOJ, or DHS do not appear in ORR's standards, because the terms are not relevant to the types of care provider facilities utilized by ORR or the term is sufficiently clear that it does not require defining. Below is an explanation for key definitions modified or added by ORR.

The standards define a ''care provider facility,'' which refers to any ORR-funded program that is licensed, certified, or accredited by an appropriate State or local agency to provide housing and services to UCs. Care provider facilities include a range of residential facilities, such as shelters, group homes, residential treatment centers, and therapeutic care provider facilities. Emergency care provider facilities are included in this definition but may or may not be licensed, certified, or accredited by an appropriate State or local agency. This licensing, certification, or accreditation has no bearing on the applicability of these rules as they are still defined as care provider facilities.

''Emergency'' refers to a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

''Emergency care provider facility'' is a type of care provider facility that is opened to provide temporary emergency shelter and services for UCs during an influx. Emergency care provider facilities may or may not be licensed by an appropriate State or local agency. Because of the temporary and emergency nature of emergency care provider facilities, they are often either not licensed or are exempted from licensing requirements by State and local licensing agencies. Emergency care provider facilities may also be opened on Federal properties, in which case, the care provider facility would not be subject to State or local licensing standards.

''Gender'' refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex. This term is not to be confused with ''sex,'' which is defined below. The definitions for the terms ''gender,'' ''gender identity,'' and ''sex'' were taken from the American Psychological Association's (APA) *Guidelines for Psychological Practice with Lesbian, Gay, and Bisexual Clients,* adopted by the APA Council of Representatives, February 18–20, 2011.[3]

''Gender identity'' refers to one's sense of oneself as a male, female, or transgender.

''Law enforcement'' is defined in these standards to refer to the traditional use of the term, such as a police officer or a federal law enforcement officer. ORR sought to clarify that it does not have its own enforcement officers, so when ''law enforcement'' is used in the regulations, ORR is referring to Federal, State, and local law enforcement agencies.

[3] *http://www.apa.org/pi/lgbt/resources/guidelines.aspx.*

''Limited English proficient'' (LEP) refers to individuals for whom English is not the primary language and who may have a limited ability to read, write, speak, or understand English.

A ''secure care provider facility'' refers to a care provider facility with a physically secure structure and staff responsible for controlling violent behavior. ORR contracts with and provides grants to State and local juvenile facilities to house a small percentage of UCs that pose a danger to self or others or have been charged with having committed a serious criminal offense.

''Sex'' refers to a person's biological status and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

''Sexual Assault Forensic Examiner'' (SAFE) refers to a ''medical practitioner'' who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

''Sexual Assault Nurse Examiner'' (SANE) refers to a registered nurse who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

The definition for ''sexual harassment'' was modified to include harassment via phone calls, emails, texts, social media messages, pictures sent or shown, and other electronic communications in addition to verbal comments and gestures.

''Special needs'' is defined in the rule as any mental and/or physical condition that requires special services and treatment by staff.

''Traditional foster care'' refers to a type of care provider facility where a UC is placed with a family in a community-based setting. The State or local licensed foster family is responsible for providing basic needs in addition to responsibilities as outlined by the State or local licensed child placement agency, State and local licensing regulations, and any ORR policies related to foster care. The UC attends public school and receives on-going case management and counseling services. The care provider facility facilitates the provision of additional psychiatric, psychological, or counseling referrals as needed. Traditional foster care may include transitional or short-term foster care as well as long-term foster care provider facilities. This type of placement is analogous to the domestic foster care system in the United States.

The definition for an ''unaccompanied child'' comes from section 462(g)(2) of the Homeland Security Act (Pub. L. 107–296).

''Youth care worker'' as defined in this interim final rule refers to employees whose primary responsibility is for the supervision and monitoring of UCs at care provider facilities. Youth care workers are not law enforcement officers, but provide supervision analogous to supervisors at a domestic group home.

Subpart A—Coverage

Section 411.10 sets forth the applicability of this Part to all ORR care provider facilities. This Part covers the standards for detecting, preventing, and responding to sexual abuse and sexual harassment at care provider facilities as required under VAWA 2013 but excludes secure care provider facilities and traditional foster care homes.

Secure care provider facilities are State and local juvenile confinement facilities that ORR contracts with or to whom ORR provides a grant to house a small population of UCs that pose a danger to self or others or have been charged with committing a serious criminal offense. ORR requires its secure care provider facilities to follow DOJ's National Standards to Prevent, Detect, and Respond to Prison Rape, so they are not subject to this rule.

Traditional foster care refers to community based foster care placements and services for UCs in ORR custody. UCs in traditional foster care reside in licensed foster homes, attend public school, and receive community-based services. Therefore, it is not practicable or necessary to extend the standards set forth here to traditional foster care homes, and they are excluded from this Part. UCs, however, may be placed in transitional foster care where they receive services at an ORR care provider facility but sleep in individual foster care homes at night. In these instances, the ORR care provider facility providing services to UCs during the day are subject to these standards but the foster home is not.

The National Prison Rape Elimination Commission was created to make recommendations for confinement facilities where inmates do not have regular access to non-prison staff and opportunities to receive help from the outside community if they are sexually abused. UCs in foster homes, however, go to public schools, receive services in the community, and routinely interact with other adults outside the foster home who would be in a position to report suspected abuse or provide aid to the UC. All foster homes are also licensed by State and local licensing authorities and are subject to licensing standards and reporting requirements.

Under paragraph (b), emergency care provider facilities are subject to every section in this Part except: (1) section 411.22(c); (2) section 411.71(b)(4); (3) section 411.101(b); (4) sections 411.102(c), (d), and (e); and (5) Subpart L. Emergency care providers are typically opened during an influx of UCs. In these instances, emergency care provider facilities are quickly erected in order to meet the immediate shelter needs of UCs and include basic care services. The standards that exempt emergency care provider facilities all refer to data reporting, document retention, or audit requirements that cover a prolonged period of time. Emergency care provider facilities are temporary in nature and would not be able to provide data for prolonged periods of time, remain open long enough to retain documents, or remain open long enough to receive an audit. Instead of retaining documents for ten years, for example, the emergency capacity care provider would transfer all documents to ORR or another care provider facility when it closed.

Generally, because emergency care provider facilities are opened in times of emergency and in a time-sensitive manner, it may not be possible for emergency care provider facilities to abide by the standards set forth in this rule immediately upon opening. Instead, emergency care provider facilities must implement the standards within fifteen (15) days of opening. The Director, however, may, using unreviewable discretion, also waive or modify a specific section for a particular emergency care provider facility for good cause, subject to an agreement in which the provider will be in compliance within the most rapid timeframe feasible. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification. For example, it may be impracticable to implement certain provisions within fifteen (15) days at particular emergency care provider facilities and some may require additional time.

Paragraph (c) states that for the purposes of this Part, the terms related to sexual abuse and sexual harassment refer specifically to the sexual abuse or sexual harassment of UCs that occur at an ORR care provider facility while in ORR care and custody. A number of UCs in ORR care have been sexually abused prior to entering ORR custody. ORR has clinicians and case workers on staff to work with UCs on these issues. For the purposes of the standards set forth here, however, incidents of past sexual abuse and sexual harassment or sexual abuse and sexual harassment that occur in any context outside of ORR care and custody are not within the scope of this regulation unless explicitly stated otherwise.

Subpart B—Prevention Planning

Section 411.11 covers the zero tolerance policy that ORR and all care provider facilities must have and the requirement that ORR and care provider facilities have a Prevention of Sexual Abuse Coordinator and a Compliance Manager, respectively. ORR is committed to a zero tolerance policy against sexual abuse and sexual harassment and will make every effort to ensure that UCs are safe and secure while in ORR care. Paragraphs (a) and (c) require ORR and care provider facilities to establish a zero tolerance policy toward all forms of sexual abuse and sexual harassment that outlines ORR and the care provider facility's approach to preventing, detecting, and responding to such misconduct. ORR will review and approve each care provider facility's written policy to ensure that the policies are in compliance with the standards set forth in this Part. Paragraphs (b) and (c) require ORR and care provider facilities to employ or designate an existing employee as a Prevention of Sexual Abuse (PSA) Coordinator and a Prevention of Sexual Abuse Compliance Manager, respectively. The PSA Compliance Manager does not need to be ''management'' but must have the time, access, and authority to question staff, managers, and supervisors in order to guide implementation of the care provider facility's policies and procedures and effectuate change. The PSA Coordinator, however, must be an upper-level, ORR-wide position. Upper-level refers to any position that has supervisory responsibilities and may conduct responsibilities ORR-wide.

Section 411.12 (a), (b), and (c) require that all organizations that contract, grant, or sub-grant with ORR or a care provider facility that provides residential services to UCs must, as part of the contract or cooperative agreement, adopt and comply with the provisions set forth in this Part. In addition, all new contracts, contract renewals, and grants must have provisions that allow monitoring and evaluation of the contractor, grantee, or sub-grantee to ensure that they are complying with these provisions.

Section 411.13 covers the standards for sufficient supervision and monitoring of UCs in order to prevent sexual abuse and sexual harassment. Ensuring staffing plans are sufficient and that the physical layout of a care provider facility does not place UCs at risk are important safeguards in preventing incidents of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to develop, document, and make its best efforts to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable under State and local licensing standards, video monitoring, to protect UCs from sexual abuse and sexual harassment. Staffing ratios should be as small as possible to allow for proper monitoring and supervision. All care provider facilities are highly encouraged to use video monitoring to supplement direct youth care worker supervision but must do so in accordance with State and local licensing standards. Paragraph (b) requires care provider facilities to consider the physical layout of the facility, the composition of the UC population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment, and any other relevant factors in determining adequate levels of supervision and determining the need for video monitoring. Video monitoring equipment, however, may not be placed in any bathroom, shower or bathing areas, or other area where UCs routinely undress. Care provider facilities are required to review the sexual abuse and sexual harassment incident reviews conducted in accordance with section 411.101 when considering the factors listed in paragraph (b) of this section to determine adequate levels of staff supervision and the need for video monitoring.

Many of ORR's care provider facilities already have video monitoring capabilities; ORR understands, however, that such technology may not be financially feasible for all care provider facilities, nor is video monitoring permitted to the same extent under different State and local licensing standards. It is not possible for ORR to create one set of requirements for monitoring and supervising UCs for all care provider facilities but wants care provider facilities to make best efforts to meet and exceed the standards set forth.

Paragraph (c) requires care provider facility staff, preferably supervisory staff, to conduct frequent unannounced rounds to monitor UCs and staff in order to identify and deter sexual abuse and sexual harassment. Care provider facilities should conduct the unannounced rounds during all shifts, including both night and day shifts. Care provider facilities must prohibit staff from alerting other staff that rounds are occurring unless an announcement is related to the legitimate operational functions of the care provider facility. For example, before entering a restroom, staff must announce themselves to ensure the UC's privacy.

Section 411.14 governs the standards related to cross-gender viewing and searches. Generally, ORR care provider facilities rarely conduct pat-down searches. In accordance with State and local licensing standards, care provider staff are often restricted from physically restraining UCs except in very limited circumstances. ORR also discourages physically restraining UCs and, instead, encourages the use of de-escalation techniques. Paragraph (a) prohibits cross-gender pat-down searches except in exigent circumstances as defined in the definitions section. For a UC who identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search. Paragraph (b) requires care provider facilities to conduct all pat-down searches in the presence of one additional care provider facility staff member unless there are exigent circumstances, document any pat-down searches conducted, and report such searches to ORR in accordance with ORR policies and procedures. The care provider facility must explain in detail why a pat-down search was required, how it was conducted, who was present during the search, the circumstances of the situation, and the outcome of the search. Paragraph (c) prohibits all strip searches and visual body cavity searches of UCs. These types of searches are not necessary for the types of care provider facilities ORR has and are strictly prohibited. Paragraph (d) requires that care provider facilities allow UCs to shower, perform bodily functions, and change clothing without being viewed by any staff, except: in exigent circumstances; when such viewing is incidental to routine room checks; is otherwise appropriate in connection with a medical examination or medically-related monitored bowel movement; if a UC under age 6 needs assistance with such activities; if a UC with special needs is in need of assistance with such activities; or the UC requests and requires assistance. Care provider facilities may have UCs with special needs in their facilities who may not be able to perform bodily functions, clothe, or bathe themselves. In these cases, care provider facilities must provide a staff member of the same gender as the UC to assist with such activities.

If the UC's sex is unknown, paragraph (e) prohibits care provider facilities from searching or physically examining the UC for the sole purpose of determining the UC's sex. Instead, care provider facility staff members should engage in conversations with the UC or review medical records. Staff must be culturally aware and sensitive to the UC when conducting such conversations. If necessary, care provider facilities may learn of a UC's sex as part of a broader medical examination conducted in private by a medical practitioner. The medical examination may not be conducted for the sole purpose of determining the UC's sex, but must be part of a broader medical examination conducted for other medical purposes.

Paragraph (f) requires care provider facilities to train youth care worker staff in the proper procedure for conducting pat-down searches, including cross-gender pat-down searches as well as searches of transgender and intersex UCs in a professional and respectful manner. Trainings should instruct youth care worker staff how to conduct a pat-down search in the least intrusive manner possible and that is consistent with security needs and existing ORR policy, including consideration of youth care worker staff safety.

Section 411.15 addresses the standards for the accommodation of UCs with disabilities and UCs who are limited English proficient. These standards are important for the UC population, as most UCs do not speak, read, or write English and may be illiterate. All care provider facilities have bilingual staff and are required to provide or access quality interpretation services, but it is important to take additional steps for UCs who do not speak the language of the majority of UCs. Paragraph (a) requires care provider facilities to take appropriate steps to ensure that UCs with disabilities have an equal opportunity to participate in or benefit from all aspects of the care provider's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Disabilities include but are not limited to UCs who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, mental, or speech disabilities. Care provider facilities must take steps that include, when necessary to ensure effective communication with UCs who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation both receptively and expressively, using any necessary specialized vocabulary. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment are translated and provided in formats or through methods that ensure effective communication with UCs with disabilities, including UCs who have intellectual disabilities, limited reading skills, or who are blind or have low vision. Care provider facilities must ensure that all communication and services provided and related to the care provider facility's prevention, detection, and response to sexual abuse and sexual harassment policies are available, understood, and accessible to all UCs.

Paragraph (b) requires that all care provider facilities take appropriate steps to ensure that UC who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary. Care provider facilities must provide services in a language appropriate to the UC and utilize qualified translators and translation services, as needed. All care provider facilities are required under ORR policies and procedures to have English and Spanish bilingual staff as well as access to qualified translators and translation services available for UC who speak a language other than English or Spanish. Upon admission to a care provider facility, care provider facility staff must assess and identify the language needs of each UC as part of the intake assessment process. Paragraph (c) requires care provider facilities to provide in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation by someone other than another UC in matters relating to allegations of sexual abuse and sexual harassment. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment, including notification, orientation, and instruction not provided by ORR, are translated either verbally or in written form into the preferred languages of UCs. Generally, ORR care provider facilities translate into Spanish all documents provided to UC. If the unaccompanied child speaks a language other than English or Spanish, the document is verbally translated to the unaccompanied child using an in-person qualified translator or telephonic interpretation services.

Section 411.16 covers standards for the hiring and promotion of care provider facility staff. In order to emphasize the importance of background checks for care provider facility staff, ORR sets forth standards for care provider facilities to follow regarding thorough background checks, periodically updating criminal background records checks, and creating an affirmative duty for staff to disclose misconduct in order to identify individuals who have committed, may have committed or are committing sexual misconduct. Generally, State and local licensing standards have strict requirements for background checks for all employees at a juvenile residential facility and have a list of crimes and offenses that bar applicants from employment.

Paragraph (a) prohibits care provider facilities from hiring, promoting, or enlisting the services of any staff, contractor, or volunteer who may have contact with UCs and who has engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution, or care provider facility; who has been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion or if the victim did not consent or was unable to consent or refuse; or who has been civilly or administratively adjudicated to have engaged in such activity. Paragraph (b) places an affirmative duty on the care provider facilities to ask all applicants who may have contact with UCs considered for hire or promotion about previous misconduct described in paragraph (a) of this section. Care provider facilities must ask applicants either in written applications or during interviews for hiring or promotions. Care provider facilities also must ask current employees, regardless of whether the employee is eligible for a promotion, in interviews or written self-evaluations conducted as part of reviews of current employees about any misconduct described in paragraph (a). In addition, care provider facilities must impose upon all employees a continuing affirmative duty to disclose any such misconduct. Care provider facilities, consistent with law, must make their best efforts to contact all prior institutional employers of an applicant to obtain information on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of alleged sexual abuse or sexual harassment.

Paragraph (c) requires care provider facilities to conduct a background investigation before hiring new staff who may have contact with UCs to determine whether the candidate is suitable for employment with minors in a residential setting. State and local licensing standards also require background investigations for all staff working at a child care facility, but the extent and scope of the background investigations differ State by State. At a minimum, ORR requires that background investigations include criminal background records checks, Child Protective Services checks, and periodic criminal background records check updates every five (5) years. The care provider facility should look at any convictions, administrative findings, or a history of offenses on a candidate's background investigation to determine if a candidate would be suitable to work with children in a residential setting. Upon ORR request, the care provider facility must submit all background investigation documentation for each staff member and the care provider's conclusions regarding the investigation. Paragraph (d) requires care provider facilities to also perform a background investigation for all potential contractors and volunteers who may have contact with UCs and provide documentation of those investigations and the care provider's conclusions to ORR upon request. Paragraph (e) mandates all care provider facilities to conduct a criminal background records check at least every five years for current employees, contractors, and volunteers who may have contact with UCs or otherwise have a system in place to capture such information. Paragraph (f) states that material omissions by staff, contractors, or volunteers regarding such misconduct or the provision of materially false information by the applicant or staff will be grounds for termination or withdrawal of an offer of employment as appropriate.

Paragraph (g) requires care provider facilities to provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work, unless it is prohibited by law to provide such information. Paragraph (h) requires care provider facilities that contract with an organization to provide residential services and/or other services to UCs to require the contractor to also follow the requirements of this section for the organization and its staff.

Section 411.17 covers the standards for care provider facilities when upgrading facilities and technologies. The purpose of this section is to ensure that care provider facilities take into account how physical and technological changes may affect a UC's vulnerability to sexual abuse and sexual harassment and the care provider facility's ability to protect the UC. Under paragraph (a), when a care provider facility is planning to design or acquire any new facility or make any substantial expansions or modifications of an existing facility, the care provider facility, as appropriate, must consider the effect of the design, acquisition, expansion, or modification on its ability to protect UCs from sexual abuse and sexual harassment. Under paragraph (b), when installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a care provider facility, the care provider facility, as appropriate, must consider how such technology may enhance its ability to protect UCs from sexual abuse and sexual harassment.

The NPREC recommends that facilities, generally, must use video monitoring systems and other cost-effective and appropriate technology to supplement sexual abuse prevention, detection, and response efforts. ORR highly encourages but does not require care provider facilities to use video monitoring systems. However, ORR requires care provider facilities to consider the use of video monitoring in § 411.13. ORR's care provider facilities are subject to State and local licensing standards, which differ with regard to video monitoring and how it may be used. Most ORR care provider facilities already utilize video monitoring in some form, but it is also not financially feasible for all care provider facilities to have video monitoring systems. ORR care provider facilities have strong supervision ratios for UCs, which allows for proper monitoring and supervision even if there is no video monitoring.

The NPREC also recommends that facilities assess, at least annually, the feasibility of and need for new or additional monitoring technology and develop a plan for securing such technology. ORR does not require an annual assessment, because video monitoring is not integral in care provider facilities to actually supervise UCs. Youth care worker staff ratios must be at or above State and local licensing standards for child residential facilities, which are very strong ratios. A typical State or local licensing required staffing ratio of adult youth care worker to UC is 1:8 during the day and 1:12 at night. Video monitoring is also subject to State and local licensing standards. Although ORR strongly encourages all care provider facilities to use video monitoring technology and update it as necessary, State and local licensing standards and financial limitations may limit its use and continuous update to the latest technology, respectively.

Subpart C—Responsive Planning

Section 411.21 lists the responsibilities of care provider facilities with regard to victim advocacy, access to counselors, and forensic medical examinations. In order to provide crisis intervention and counseling services to meet the specific needs of sexual abuse and sexual harassment victims, paragraph (a) requires care provider facilities to develop procedures to best utilize community resources and services to provide expertise and support to UC victims. All care provider facilities must establish procedures to make available to UC victims outside victims services following incidents of sexual abuse and sexual harassment that occur within the care provider facility. The care provider facility must attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available or if the UC prefers, the care provider facility must provide a licensed clinician on staff to provide crisis intervention and trauma services for the UC. However, staff members are not to conduct forensic examinations regardless of whether they are qualified or community-based staff members. The outside or internal victim advocate must provide, at a minimum, emotional support, crisis intervention, information, and referrals to the UC victim.

When it is medically appropriate and necessary for evidence to be collected, paragraph (b) requires the care provider facility to arrange, with the UC's consent, for an alleged UC victim to undergo a forensic medical examination as soon as possible and that is performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination may be performed by a qualified medical practitioner. Care provider facility staff must inform UCs of the availability of forensic medical examinations and request their consent to have a forensic medical examination, where appropriate, completed as soon as possible after the incident. Paragraph (c) requires that, upon the UC victim's request, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered at a hospital conducting a forensic examination, must be allowed to the extent possible for support during a forensic examination and investigatory interviews. Paragraph (d) requires that care provider facilities, to the extent possible, request that the investigating agency follow the requirements of paragraphs (a) through (c) of this section in order to provide for the needs of UCs.

The NPREC recommends that the agency follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions. The recommendations go on to describe what to include in the protocol. Since ORR does not conduct administrative or criminal investigations, it does not include this recommendation. Instead, all allegations are referred to outside investigators, such as local law enforcement, Child Protective Services, and State and local licensing agencies, and the investigating agency collects any evidence as necessary. ORR does require in section 411.64 that first responders ensure that all crime scenes are preserved and protected until the appropriate authority arrives to collect any evidence.

Section 411.22 sets standards to ensure that all allegations of sexual abuse and sexual harassment are investigated. ORR and care provider facilities must immediately report all allegations of sexual abuse and sexual harassment to outside investigating agencies as soon as an allegation is made. Such investigating agencies include local and State law enforcement, local and State Child Protective Services, and local and State licensing agencies. ORR and care provider facilities are not enforcement agencies and do not have the authority to conduct criminal investigations. Upon receiving an allegation, ORR will monitor and evaluate the care provider facility to ensure that ORR policies and procedures and relevant legal authorities were followed, including compliance with the standards set forth in this section, as well as any ways in which the facility might improve its practices and procedures. If the care provider failed to report an incident to the appropriate outside agencies, ORR will report any lapse in reporting to the local or State licensing agency, local or State Child Protective Services, and local or State law enforcement agency. If the care provider failed to report an incident to ORR or follow ORR policies and procedures, ORR will issue corrective actions and may terminate or suspend its grant or contract with the care provider facility for failing to comply with ORR requirements. ORR and care provider facilities do not conduct internal investigations regarding the substance of the allegation, because they do not want to interfere or influence an investigation by law enforcement, Child Protective Services, or the State or local licensing agency.

Under paragraph (a), ORR and care provider facilities must ensure that every allegation of sexual abuse and sexual harassment is immediately referred to all appropriate investigating agencies, including law enforcement agencies, Child Protective Services, State or local licensing agencies, and to ORR according to ORR policies and procedures. All allegations must be referred for investigation regardless of how the allegation is reported or who makes the report, including reports from third-parties and anonymous reporters. Care provider facilities must remain informed of ongoing investigations and fully cooperate with outside investigators as necessary. Paragraph (b) requires care provider facilities to maintain or attempt to enter into a memorandum of understanding or other agreement with law enforcement agencies, with designated State or local Child Protective Services, and with the State or local licensing agency responsible for conducting sexual abuse and sexual harassment investigations, as appropriate. Care provider facilities are required to maintain a relationship with these agencies to ensure investigations are conducted and completed in a timely manner. Care provider facilities must maintain a copy of the agreement or documentation showing attempts to enter into an agreement. Paragraph (c) requires all care provider facilities to maintain documentation of all reports and referrals of allegations of sexual abuse and sexual harassment for at least ten years.

Under paragraph (d), ORR will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.

Under paragraph (e), allegations of sexual abuse that occur at emergency care provider facilities operated on Federal properties must be reported to the Department of Justice in accordance with ORR policies and procedures and any memoranda of understanding. Emergency care provider facilities operating on Federal properties and within Federal buildings may not be subject to State or local licensing standards.

The NPREC also recommends that facilities investigate all allegations of sexual abuse and ensure that investigations are carried through to completion, regardless of whether the alleged abuser or victim remains at the facility and regardless of whether the source of the allegation recants his or her allegation. ORR did not include this recommendation, because ORR does not conduct investigations regarding the substance of an allegation. Instead, as stated in the previous paragraphs, ORR requires that all care provider facilities refer all allegations, regardless of how an allegation is made or who it comes from, to the proper investigating authorities. ORR and care provider facilities have no control over whether law enforcement, Child Protective Services, or a State or local licensing agency conducts an investigation. Both ORR and care provider facilities, however, must attempt to remain informed of ongoing investigations and fully cooperate as necessary. ORR also will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding. Additionally, ORR will monitor and evaluate the care provider facility to ensure that ORR policies and procedures and relevant legal authorities were followed, including compliance with the standards set forth in this section, as well as any ways in which the facility might improve its practices and procedures.

The NPREC goes on to recommend that an agency maintain or attempt to enter into a written memorandum of understanding or other agreement with the authority responsible for prosecuting violations of criminal law as well as maintain documentation of such agreements. ORR does not include this standard in this rule, because ORR does not conduct administrative or criminal investigations. The investigating agency is in a better position to refer cases to prosecutors after completing an investigation and determining if there is sufficient evidence to refer a case to prosecuting authorities.

Subpart D—Training and Education

Section 411.31 covers the standards for training staff on sexual abuse and sexual harassment-related policies and procedures. Staff training is integral to implementing the standards in this Interim Final Rule and truly preventing, detecting, and properly responding to sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to train or require the training of all employees who may have contact with UCs on their responsibilities under these standards, including any medical or mental health care personnel who are staff members of the care provider. The NPREC recommends that employees receive training, including investigators. ORR does not require these trainings for investigators because neither ORR nor care provider facilities employ investigators. All allegations are referred to outside investigators. ORR will, however, encourage care provider facilities through its policies and procedures to make efforts to provide training for investigators and outside medical and mental health care practitioners not employed by care provider facilities. Training topics must include, at a minimum: the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment; the right of UCs and staff to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse and sexual harassment; definitions and examples of prohibited and illegal sexual behavior; recognition of situations where sexual abuse or sexual harassment may occur; recognition of physical, behavioral, and emotional signs of sexual abuse and methods of preventing and responding to such occurrences; how to avoid inappropriate relationships with UCs; how to communicate effectively and professionally with UCs, including UCs who are lesbian, gay, bisexual, transgender, questioning, or intersex; procedures for reporting knowledge or suspicion of sexual abuse and sexual harassment as well as how to comply with relevant laws related to mandatory reporting; the requirement to limit reporting of sexual abuse and sexual harassment to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement or investigative purposes; cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior and appropriate terms and concepts to use when discussing sex, sexual abuse, and sexual harassment with a culturally diverse population; sensitivity and awareness regarding past trauma that may have been experienced by UCs; and knowledge of all existing resources for UCs both inside and outside the care provider facility that provide treatment and counseling for trauma and legal advocacy for victims. Paragraph (b) requires that these trainings be completed within six months of the effective date of these standards, and care provider facilities must provide refresher training and information as appropriate. Under paragraph (c), care provider facilities must document that staff and employees who may have contact with UCs have completed the training.

Section 411.32 discusses the standards for volunteer and contractor training on sexual abuse and sexual harassment-related policies and procedures. As stated in the previous section, volunteer and contractor training is incredibly important in implementing the standards in this Interim Final Rule. In particular, volunteers and contractors may not be familiar with standard child welfare practices and sexual abuse and sexual harassment issues, so it is important to provide complete and thorough training to any volunteer or contractor who may have contact with UCs. Paragraph (a) requires care provider facilities to ensure that all volunteers and contractors who may have contact with UCs are trained on their responsibilities under the care provider facility's sexual abuse and sexual harassment prevention, detection, and response policies and procedures as well as any relevant Federal, State, and local laws. Paragraph (b) allows care provider facilities to decide the level and type of training that is provided to volunteers and contractors based on the services they provide and the level of contact they will have with UCs. All care provider facilities, however, must provide all volunteer and contractors with training on the care provider facility's zero tolerance policies and procedures regarding sexual abuse and sexual harassment and inform them on how to report such incidents. Paragraph (c) requires care provider facilities to maintain written documentation that contractors and volunteers who may have contact with UCs have completed the required training.

Section 411.33 addresses the requirements for educating UCs on the care provider facility's zero tolerance policies. ORR realizes that UCs are minors who may not understand what sexual abuse or sexual harassment are, so educating UCs is an important component that is of the utmost importance to preventing sexual abuse and sexual harassment. Additionally, care provider facilities must ensure that the orientation is provided in such a way that the UC comprehends what he/she is being told or given.

ORR requires under paragraph (a) that all care provider facilities must ensure that during the orientation and periodically thereafter UCs are notified and informed of the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment in an age and culturally appropriate fashion and in accordance with section 411.15. At a minimum, the orientation on the care provider facility's zero tolerance policy must include an explanation of the UC's right to be free from sexual abuse and sexual harassment as well as the UC's right to be free from retaliation for reporting such incidents; definitions and examples of UC-on-UC sexual abuse, staff-on-UC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment; an explanation of the methods for reporting sexual abuse and sexual harassment, including to any staff member, outside entity, and to ORR; and an explanation of a UC's right to receive treatment and counseling if the UC was subject to sexual abuse or sexual harassment. Paragraph (b) requires all care provider facilities to provide notification, orientation, and instruction in formats accessible to all UCs at a time and in a manner that is separate from information provided about their immigration cases. Although care provider facilities do not discuss immigration case details with the UC, and ORR is a neutral party in relation to a child's removal proceedings, ORR wants to ensure that any discussion regarding a UC's immigration status remains separate from the explanation of a care provider facility's sexual abuse and sexual harassment-related policies and procedures. This is to avoid any risk that the UC will think that sexual harassment or sexual abuse-related reporting, assistance, or any other related activity could impact his/her immigration case.

Care provider facilities under paragraph (c) are required to document all UCs' participation in orientation and periodic refresher sessions that address the care provider facility's zero tolerance policies.

In addition to the orientation session, care provider facilities also must post information in accordance with section 411.15 on all housing unit bulletin boards about who a UC can contact if he or she has been a victim of sexual abuse or sexual harassment or is believed to be at imminent risk of sexual abuse or sexual harassment under paragraph (d). Under paragraph (e) care provider facilities also must make available and distribute to all UCs a pamphlet in accordance with section 411.15 that contains, at a minimum, the following: notice of the care provider facility's zero tolerance policy toward sexual abuse and sexual harassment; the care provider facility's policies and procedures related to sexual abuse and sexual harassment; information on how to report an incident of sexual abuse or sexual harassment; the UC's rights and responsibilities related to sexual abuse and sexual harassment; how to contact organizations in the community that provide sexual abuse and sexual harassment counseling and legal advocacy for UC victims of sexual abuse and sexual harassment; and how to contact diplomatic or consular personnel. UCs, upon entering a care provider facility and receiving an orientation, may not remember every piece of information provided, so it is important to post and distribute pamphlets to ensure UCs are always informed.

The NPREC recommends that the pamphlet also include information on how to contact the Office for Civil Rights and Civil Liberties (OCRCL) as well as the Office of the Inspector General (OIG) at DHS. ORR does not include the contact information for OCRCL and OIG at DHS, because UCs are in the care and custody of HHS and not DHS. ORR also does not include the contact information for OCRCL and OIG at HHS, because the two offices do not function like their counterparts at DHS. OIG, for example, does not have the capacity to receive UC reports 24 hours a day in order to immediately refer any UC reports it receives. ORR, instead, provides that an outside agency may receive reports of sexual abuse and sexual harassment, and UCs may always contact diplomatic or consular personnel. In addition, UCs may always directly contact ORR 24-hours a day. The pamphlet will include contact information for care provider facility staff, ORR, the outside agency, and diplomatic and consular personnel.

The NPREC also recommended that sexual abuse education be provided by a qualified individual with experience communicating about these issues with a diverse population. ORR does not explicitly include the requirement that an individual have experience communicating about these issues with a diverse population in this section, because all policies and services related to this rule must be implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population under section 411.11. In addition, section 411.15 requires that care provider facilities ensure meaningful access to all aspects of the care provider facility's sexual abuse and sexual harassment policies to UCs who are limited English proficient. Further, section 411.31 requires all care provider facility staff who may have contact with UCs to receive training on, among other things, cultural sensitivity and effectively communicating with UCs who are LGBTQI.

Section 411.34 covers the specialized training required of medical and mental health care staff employed or contracted by care provider facilities. This standard does not include medical and mental health professionals utilized in the community and at local hospitals not contracted or employed by care provider facilities. Under paragraph (a), all medical and mental health care staff employed or contracted by care provider facilities must be specially trained, at a minimum, on the following topics: how to detect and assess signs of sexual abuse and sexual harassment; how to respond effectively and professionally to victims of sexual abuse and sexual harassment; how and to whom to report allegations or suspicions of sexual abuse and sexual harassment; and how to preserve physical evidence of sexual abuse. If medical staff intend to conduct forensic examinations, they must receive specific training to conduct such examinations prior to conducting them. Care provider facilities must document that medical and mental health practitioners employed or contracted by the care provider facility received the training referenced in this section under paragraph (b). Paragraph (c) clarifies that medical and mental health practitioners employed or contracted by the care provider facility must receive the training outlined in this section in addition to the training mandated for all care provider facility employees under section 411.31 or for contractors and volunteers under section 411.32, depending on the practitioner's status at the care provider facility.

The NPREC recommends that the agency also provide specialized training for investigators conducting sexual abuse investigations. Because ORR refers all allegations to outside investigators, however, ORR did not include this standard.

Subpart E—Assessment for Risk of Sexual Victimization and Abusiveness

Section 411.41 requires care provider facilities to assess UCs who may be at risk of being sexually abused or harassed or abusing or harassing others. Under paragraph (a), within 72 hours of a UC's arrival at a care provider facility, care provider facilities must obtain and use information about each UC's personal history and behavior to reduce the risk of sexual abuse or sexual harassment by or upon a UC. In addition, care provider facilities must periodically reassess the UC throughout a UC's stay at the care provider facility. Paragraph (b) requires that the care provider facility's assessment of UCs for risk of sexual victimization and abusiveness must include consideration, at a minimum and to the extent that the information is available, the following criteria: prior sexual victimization or abusiveness; any gender nonconforming appearance or manner or identification as lesbian, gay, bisexual, transgender, questioning, or intersex and whether the UC may therefore be vulnerable to sexual abuse or sexual harassment; any current charges and offense history; age; any mental, physical, or developmental disability or illness; level of emotional and cognitive development; physical size and stature; the UC's own perception of vulnerability; and any other specific information about an individual UC that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other UCs.

Paragraph (c) states that the care provider facility must obtain the information listed in paragraph (b) of this section through conversations with the UC during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, care provider facility behavioral records, and other relevant documentation from the UC's files. Only trained staff are permitted to talk with UCs to gather information specifically about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes of the assessment required under paragraph (a) of this section. Care provider facilities must provide UCs with an opportunity to discuss any safety concerns or sensitive issues privately. Under paragraph (d), care provider facilities must take appropriate steps and implement controls on the dissemination within the care provider facility of responses to questions asked pursuant to the standard set forth in this section in order to ensure that sensitive information is not exploited to the UC's detriment by staff or other UCs.

The NPREC also recommends that the facility make every reasonable effort to obtain institutional and criminal records of immigration detainees in its custody prior to screening for risk of victimization and abusiveness. It also recommends that screenings be conducted by employees who are culturally competent. As part of ORR's placement procedures, all UCs placed in ORR custody must be referred by a federal agency. DHS provides almost all referrals of UCs to ORR and will provide any U.S. criminal records of UCs when referring them. Therefore, ORR did not include this standard, because any existing U.S. criminal records are already transferred to ORR when a UC is placed in its care. UCs may also have a criminal record in a country outside the U.S., but those records take time to collect since they come from INTERPOL. INTERPOL is the world's largest international police organization, with 190 member countries. It ensures that police around the world have access to the tools and services necessary to do their jobs effectively, including access to criminal records in various countries. It would not be feasible to obtain non U.S. records within 72 hours as required under section 411.41.

Section 411.42 explains how care provider facilities are required to use the assessment completed in section 411.41. Paragraph (a) requires care provider facilities to use the information gathered from the assessment completed under section 411.41 to inform the assignment of UCs to housing, education, recreation, and other activities and services. Instead of making generalized decisions for groups of UCs, care provider facilities must make an individualized determination for each UC to ensure the UC's safety and health.

One-on-one supervision in ORR care provider facilities does not refer to the type of solitary confinement used by prisons. UCs are not forced to remain alone and in locked rooms. Instead, one-on-one supervision refers to direct line-of-sight supervision at all times. Paragraph (b) states that care provider facilities may not place UCs on one-on-one supervision as a result of the assessment unless there are exigent circumstances that require it to keep the UC, other UCs, or staff safe. A UC may only be placed on one-on-one supervision until an alternative means of keeping all residents and staff safe can be arranged. A UC who is on one-on-one supervision for his/her safety must still receive all required services, including but not limited to, daily large-muscle exercise, required educational programming, and social services, when possible and reasonable under the circumstance. UCs on one-on-one supervision must receive daily visits from a medical practitioner or mental health care clinician as necessary. The medical practitioner or mental health care clinician may decide based on the needs of the UC that daily visit are not required, but he/she must continue to meet with the UC on a regular basis while the UC is on one-on-one supervision. UCs, however, should generally not be placed on one-on-one supervision for a period of days or weeks. Exigent circumstances should be resolved as soon as possible and once safety is restored, UCs should no longer be supervised one-on-one.

When making assessment and housing assignments for a transgender or intersex UCs, paragraph (c) requires care provider facilities to consider the UC's gender self-identification and an assessment of the effects of placement on the UC's health and safety. The care provider facility must consult a medical or mental health professional as soon as practicable on this assessment, but the care provider facility should not base housing assignment decisions of transgender or intersex UCs solely on the identity document or physical anatomy of the UC. An identity document may include but is not limited to U.S. and foreign government documentation, such as DHS forms provided when a UC is referred to ORR, birth certificates, and other official documentation stating the UC's sex. A UC's self-identification of his/her gender and self-assessment of safety needs must always be taken into consideration unless State and local licensing standards require otherwise. Some State and local licensing standards have specific requirements for the housing of transgender or intersex UC. In such cases, care provider facilities must follow State and local licensing requirements. Care provider facilities must regularly reassess the housing and programming assignments of each transgender or intersex UCs to review any threats to safety experienced by the UC.

The NPREC recommended that facilities that house both inmates and immigration detainees house all immigration detainees separately from other inmates in the facility. ORR did not include this standard, because it is not applicable for ORR care provider facilities. Immigration detainees housed by DHS may be placed in jails or lockups, which is why the NPREC makes this recommendation. ORR, however, places UCs at residential shelters that may also house domestic children, but the domestic children are not inmates or at the care provider facility because of criminal or delinquent acts. Domestic children at care provider facilities are typically minors in the domestic child welfare system and are often orphaned, separated from parents, or pregnant teens.

ORR does have a policy for care provider facilities to house UCs separate from domestic populations, if the care provider facility also houses domestic populations. Generally, most UCs are housed separately, but there are exceptions to this policy. For example, ORR allows mixing of domestic minors and UCs in specialized placements, such as at residential treatment centers. In these care provider facilities, there is a higher level of supervision and care, and it is not feasible to separate the two populations, because there are a very small number of UCs at these care provider facilities. ORR does not want to effectively isolate UCs in that way.

Subpart F—Reporting

Section 411.51 discusses care provider facility requirements regarding the ability of UCs to report sexual abuse and sexual harassment and any retaliatory actions resulting from reporting sexual abuse and sexual harassment. The ability of UCs to freely and immediately report sexual abuse and sexual harassment is essential for their protection and safety. ORR is committed to providing easily accessible methods for UCs to make reports. Paragraph (a) requires that care provider facilities develop policies and procedures for UCs to have multiple ways to report sexual abuse and sexual harassment, retaliation for reporting sexual abuse and sexual harassment, and staff neglect or violations of responsibilities that may have contributed to such incidents to the care provider. The care provider facility also must provide access to and instructions on how UCs can contact their consular official, ORR's headquarters, and an outside entity to confidentially, and, if desired, anonymously report these incidents. Instructions on how to contact consular officials should include a list of phone numbers, and UCs must be provided access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under section 411.51(b).

Under paragraph (b), care provider facilities also must provide and inform the UC of at least one way for UCs to report sexual abuse and sexual harassment to an entity or office that is not part of the care provider facility and is able to receive and immediately forward UC reports of sexual abuse and sexual harassment to ORR officials, allowing UCs to remain anonymous upon request. For example, care provider facilities may collaborate with rape crisis centers or local nonprofit organizations to receive UC reports of sexual abuse and sexual harassment that can be directly forwarded to law enforcement and ORR. The care provider facility must also maintain or attempt to enter into a memorandum of understanding or other agreement with the entity or office and maintain copies of agreements or documentation showing attempts to enter into agreements. The care provider facility's policies and procedures under paragraph (c) also must include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties. Staff must promptly document any verbal reports. Paragraph (d) requires all allegations of sexual abuse and sexual harassment by staff or UCs to be immediately reported to ORR according to ORR's policies and procedures.

The NPREC recommends that facilities provide access to telephones with free, preprogrammed numbers to the DHS Office for Civil Rights and Civil Liberties (CRCL) and Office of the Inspector General (OIG). ORR did not include this requirement, because UCs are in the care and custody of ORR and not of DHS. ORR also did not include a requirement to provide preprogrammed numbers to HHS' CRCL and OIG, because they do not function in the same manner that DHS' offices do. HHS' CRCL and OIG do not have the capacity to accept reports from UCs on a 24-hour basis. ORR, however, provides UCs the opportunity to report to care provider facilities, ORR headquarters, and to an outside agency. UCs will have access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under section 411.51(b).

Section 411.52 addresses requirements for a care provider's grievance policies and procedures. The grievance process is another method through which UCs may make reports of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to implement written policies and procedures for identifying and handling time-sensitive grievances that involve an immediate threat to UC health, safety, or welfare related to sexual abuse and sexual harassment. All such grievances must be reported to ORR and responded to immediately. Paragraph (b) requires care provider facility staff to immediately notify medical or emergency services personnel if there is a UC medical emergency. Paragraph (c) requires care provider facilities to issue a written decision on the grievance within five (5) days of receipt of the grievance. Paragraph (d) states that UC may obtain assistance from other UCs, care provider facility staff, family members, or legal representatives to prepare a grievance; and care provider facilities must take reasonable steps to expedite requests for assistance from these other parties. Under State mandatory reporting requirements and section 411.51(d), if a care provider facility staff member assists the UC in filing a grievance and gains knowledge of sexual abuse or sexual harassment occurring at a care provider, he/she must also separately make a report to the appropriate law enforcement agency, Child Protective Services agency, State or local licensing agency, and ORR. If a third-party assists the UC, such as a family member or legal representative, and he/she has knowledge of sexual abuse and sexual harassment occurring at a care provider facility, he/she also may file reports of sexual abuse and sexual harassment with the appropriate law enforcement agency, Child Protective Services agency, State or local licensing agency, and with ORR.

The NPREC recommends a specific procedure for the exhaustion of administrative remedies. ORR did not include this standard, because ORR does not require UCs to exhaust any type of administrative remedy before a care provider facility is required to take action in order to protect UCs or respond to any allegation of sexual abuse and sexual harassment. Care provider facilities must immediately respond to all allegations of sexual abuse and sexual harassment regardless of how the allegation is reported and also immediately refer the allegation to outside investigating agencies. The previous paragraph discussing grievances describes how grievances are to be filed and promptly responded to by care provider facilities. It does not require a UC to file a grievance before referring an allegation for investigation. It is simply one way for a UC to make a report of sexual abuse or sexual harassment, and ORR requires care provider facilities to have policies and procedures to ensure grievances are addressed in a timely and appropriate manner.

Section 411.53 requires that care provider facilities provide UCs access to outside confidential support services. Although ORR care provider facilities have case managers and clinicians that work with individual UCs on an ongoing basis, care provider facilities also should provide UC victims of sexual abuse and sexual harassment access to outside community resources. If the alleged abuser is a clinician or case manager at the care provider facility, the UC should be able to access outside services and counsel. Paragraph (a) requires care provider facilities to utilize available community resources and services to provide support for a UC victim in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators. The care provider facility should maintain or try to enter into memoranda of understanding or other agreements with community service providers for immigrant victims of crime and maintain copies of its agreements or documentation showing attempts to enter into agreements. If such resources are available, care provider facilities must have written policies and procedures that include these outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols under paragraph (b). Finally, paragraph (c) requires care provider facilities to make available to UCs information about local organizations that can assist UCs who are victims of sexual abuse and sexual harassment, including mailing addresses and telephone numbers. The care provider facility must allow reasonable communication between the UC and these organizations and agencies in a confidential manner and inform the UC, prior to giving him/her access, of the extent to which such communications will be confidential. The NPREC recommends that the facility also provide UC with unimpeded access to their attorney or other legal representative and their families. ORR has incorporated this recommendation in section 411.55.

The NPREC recommends that the outside service provider help victims of sexual abuse during their transition from incarceration to the community. UCs are not incarcerated like minors in juvenile delinquency facilities, so this standard was not included. ORR, however, does believe it is important to connect special needs or at-risk UCs with resources in the community once they are released. ORR provides post-release services for certain UCs, which would include UC victims of sexual abuse and sexual harassment, in order to connect UCs and UC sponsors with resources in their community to assist with any needs a UC may have. This service helps UCs transition into the community in which they are released.

Section 411.54 requires ORR to establish a method to receive third-party reports of sexual abuse and sexual harassment at care provider facilities. In addition, ORR is required to make available to the public information on how to report sexual abuse and sexual harassment on behalf of a UC. This is to allow parents, family members, friends, and anyone else to make a report on behalf of a UC. The NPREC recommends that at the conclusion of the investigation, the facility notify in writing the third-party individual who reported the abuse and the resident named in the third-party report of the outcome of the investigation. ORR makes efforts to notify all UCs that are the suspected victims of allegations of sexual abuse and sexual harassment of the outcome of the investigation under section 411.72. ORR, however, does not notify the third-party reporter of the outcome of the investigation in order to protect both the UC and an anonymous third-party reporter. A third-party reporter may be any individual with no relation to the UC. In order to protect the privacy of the UC, ORR will notify the UC of the result, and the UC may choose whether or not to notify the third-party of the results of the investigation. ORR will also accept anonymous third-party reports. In order to maintain the anonymous status of the reporter, ORR cannot provide the third-party notification of the outcome of the investigation.

Section 411.55 requires care provider facilities to ensure that UCs have access to their attorneys or other legal representatives and families. Paragraph (a) states that care provider facilities must provide UCs with confidential access to their attorney or other legal representative in accordance with the care provider's attorney-client visitation rules. A care provider's attorney-client visitation rules typically include time and place restrictions and require the attorney or legal representative to provider proper identity documentation prior to allowing the attorney to communicate with the UC. Care provider facilities have these rules in order to decrease disruptions in the UC's school and services schedule and to protect the UC's safety and security. In the event of an emergency or exigent circumstance, such as an incident involving law enforcement or the need to make an informed decision regarding medical services, for example, care provider facilities are required to have rules that allow UCs immediate access to attorneys, whether in-person or via telephone. All attorneys, however, should provide proper identity documentation as well as documentation, such as an individualized representation agreement demonstrating they are the UC's attorney, prior to gaining access to any UC. The care provider's attorney-client visitation rules must be approved by ORR to ensure the rules are reasonable and appropriate and include emergency provisions. Care provider facilities must also provide a confidential space for UCs to meet or speak on the phone privately with their attorneys.

Paragraph (b) requires care provider facilities to allow UCs access to their families, including legal guardians, unless ORR has documentation showing that certain individuals should not be provided access because of safety concerns. ORR, for example, may have documentation that a parent has abused his/her child and, therefore, care provider facilities may restrict that individual's access to the UC if the parent poses a safety and security concern for the UC.

Subpart G—Official Response Following a UC Report

Section 411.61 covers reporting requirements for care provider facility staff. ORR takes seriously the responsibility to report incidents of sexual abuse and sexual harassment. In addition, most staff members at care provider facilities are considered mandatory reporters under State law, and, therefore, must ensure they report all allegations, incidents, and suspicions of sexual abuse and sexual harassment to all proper authorities under State and local law as well as under these standards. Consequently, if care provider facility staff are found to have knowledge or suspicion of sexual abuse or sexual harassment but have not reported it, the staff member will be subject to strict sanctions or corrective actions, up to and including termination of employment. ORR will also refer such cases to Child Protective Services and State and local licensing agencies.

In addition to State and local mandatory reporting requirements, paragraph (a) requires that all care provider facility staff, volunteers, and contractors report immediately to ORR according to ORR policy and procedures and to State or local agencies in accordance with mandatory reporting laws: Any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred while a UC was in ORR care. All care provider facility staff, volunteers, and contractors also must report immediately any knowledge, suspicion, or information regarding retaliation against UCs or staff who reported an incident of sexual abuse or sexual harassment or any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. ORR must review and approve the care provider's policies and procedures regarding reporting requirements to ensure that the care provider facility has appropriate reporting procedures. Paragraph (b) requires care provider facility staff to make sexual abuse and sexual harassment reports in accordance with ORR's policies and procedures as well as the care provider's policies and procedures, as approved by ORR under section 411.11(c). Apart from the report, care provider facility staff must not reveal any information within the care provider facility related to a sexual abuse or sexual harassment report to anyone other than to the extent necessary to provide medical and mental health treatment, investigation, notice to law enforcement, or other security and management decisions under paragraph (c). This is to ensure that sexual abuse and sexual harassment reports are kept as confidential as possible to ensure the safety of the UC and/or staff member. Care provider facilities, however, must comply with all ORR requests for information regarding sexual abuse and sexual harassment allegations.

Paragraph (d) requires care provider facility staff also to report any sexual abuse and sexual harassment allegations to the designated State or local services agency under applicable mandatory reporting laws in addition to law enforcement and the State or local licensing agency. Paragraph (e) requires that upon receiving an allegation of sexual abuse or sexual harassment, the care provider facility head or his or her designee must report the allegation to the alleged victim's parents or legal guardians, unless ORR has evidence showing the parents or legal guardians should not be notified or the victim does not consent to this disclosure of information and is 14 years of age or older, and ORR has determined the victim is able to make an independent decision. For example, if parental rights or legal guardian rights have been legally terminated and ORR has documentation of such termination, care provider facilities should not notify the UC's parent or legal guardian whose rights to the UC have been terminated. There may also be circumstances, for example, where ORR has evidence that a parent or legal guardian has abused a UC in the past and currently poses a danger to the safety and security of the UC. In such cases, ORR may choose not to notify a UC's parent or legal guardian to protect the safety of the UC. If the UC victim does not consent to the disclosure of information to his/her parents or legal guardians and is 14 years of age or older and ORR has determined the victim is able to make an independent decision, ORR will not require parental notification. If the UC is under 14 years of age, ORR will notify the UC's parent or legal guardian of the allegation as long as there is no evidence to show that the parents or legal guardian should not be notified. ORR, along with DOJ and DHS, consider UC 14 years of age and older as capable of making certain decisions, such as submitting an application for immigration status to the U.S. Citizenship and Immigration Services and choosing an attorney and completing the form for attorneys to officially appear as a minor's attorney or accredited representative in immigration court. If a minor may sign a form to retain a legal representative, then ORR will allow that minor to choose whether to disclose information to that attorney. Lastly, upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, ORR will share this information with the UC's attorney of record within 48 hours of learning of the allegation under paragraph (f) unless the UC does not consent to the disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision. Instead of requiring the care provider facility to notify the juvenile court or the victim's judge of record, as recommended by the NPREC, ORR requires that the care provider facility notify the UC's attorney of record. UCs are not in juvenile court proceedings.

The NPREC also recommends that medical and mental health practitioners be required to report sexual abuse to designated supervisors and officials as well as to the designated State or local services agency and must inform residents of their duty to report at the initiation of services. ORR did not explicitly state this here, because all medical and mental health practitioners that are on staff or are a contractor of a care provider facility are required to report sexual abuse and sexual harassment like any other staff member under this section. Unlike a typical prison environment where medical and mental health practitioners may have different reporting structures and responsibilities under PREA than prison staff, medical and mental health practitioners in ORR care provider facilities are required to make reports in the same way that all other staff make reports. They are subject to all the requirements in this rule that apply to care provider facility staff. The medical and mental health practitioner is also bound by his/her professional responsibilities as a medical provider to make appropriate reports and provide disclosures, as appropriate. ORR does not distinguish between staff in making reports. All staff are required to report all suspicions.

Section 411.62 requires care provider facilities to protect UCs from sexual abuse and sexual harassment. If a care provider facility employee, volunteer, or contractor reasonably believes that a UC is subject to substantial risk of imminent sexual abuse, he or she must immediately take action to protect the UC. Taking action may include, but is not limited to, reporting to care provider facility management, contacting a youth care worker, physically moving the endangered UC, and reporting suspicions and risks to both care provider facility management and ORR.

Section 411.63 covers topics related to reporting allegations to other care provider facilities. Paragraph (a) requires that a care provider facility, upon receiving an allegation that a UC was sexually abused or sexually harassed while at another care provider facility, must immediately notify ORR no later than 24 hours after receiving the allegation. ORR will then notify the care provider facility where the alleged abuse or harassment occurred. Under paragraph (b), the care provider facility whose staff received the allegation must document that it provided notification of the allegation to ORR. Under paragraph (c), the care provider facility that receives notification that an allegation of sexual abuse or sexual harassment occurred at its facility must ensure that the allegation is referred for investigation in accordance with these standards and State and local law. Paragraph (d) requires that a care provider facility, upon receiving an allegation that a UC was sexually abused or sexually harassed while in DHS custody, must immediately notify ORR but no later than 24 hours after receiving an allegation. ORR will then report the allegation to DHS. The care provider facility must document under paragraph (e) that it provided ORR such notification.

Section 411.64 outlines what duties are required for staff responding to an allegation of sexual abuse. Paragraph (a) outlines the requirements for the first care provider staff member to respond to a report of sexual abuse. The care provider facility staff member must separate the alleged victim and abuser; preserve and protect, to the greatest extent possible, any crime scene until the appropriate authorities can take steps to collect any evidence; if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and if the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser and/or witnesses do not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking or eating. The care provider facility staff member should request that such actions not be taken, but the staff member should not physically restrain any UCs from taking such actions. If for any reason evidence cannot be collected in a timely fashion and the UC requests to use the restroom, UCs should be allowed to urinate and defecate as needed.

Section 411.65 requires care provider facilities to have a coordinated response to all allegations of sexual abuse that is immediate, efficient, and thorough. Paragraph (a) requires care provider facilities to develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, outside investigators, victim advocates, and care provider facility leadership in response to an incident of sexual abuse to ensure that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence. ORR must review and make an approval decision on the written institutional plan to ensure it adequately addresses all concerns and is in accordance with ORR policies and procedures. Paragraph (b) requires care provider facilities to use a coordinated, multidisciplinary team approach to respond to sexual abuse. Under paragraph (c), if a victim of sexual abuse is transferred between ORR care provider facilities, ORR must, as permitted by law, inform the receiving care provider facility of the incident and the victim's potential need for medical or social services. Under paragraph (d), if a victim of sexual abuse is transferred from an ORR care provider facility to a non-ORR facility or sponsor, ORR must, as permitted by law, inform the receiving care provider facility or sponsor of the incident and the victim's potential need for medical or social services, unless the victims requests otherwise.

Section 411.66 requires that ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment be immediately removed from all duties that would involve or allow access to UCs pending the outcome of an investigation.

Section 411.67 addresses protections against retaliation. Care provider facility staff, contractors, and volunteers as well as UCs must not retaliate against any person, including a UC, who reports, complains about, or participates in an investigation into an allegation of sexual abuse or sexual harassment. Retaliation is absolutely prohibited and must be strongly addressed. For the remainder of the UC's stay in ORR custody following a report of sexual abuse or sexual harassment, ORR and the care provider facility must monitor to see if there may be possible retaliation occurring by UCs or care provider facility staff. If there are suspicions of retaliation, the care provider facility must address the retaliation and remedy the situation. For example, ORR and the care provider facility staff should monitor UC disciplinary reports, housing or program changes, negative performance reviews, or reassignments of staff. Care provider facilities must discuss any changes with the appropriate UC or staff member as part of their efforts to determine if retaliation is taking place, and, when confirmed, immediately take steps to protect the UC or staff member.

Section 411.68 addresses post-allegation protection of UCs and staff. Under paragraph (a), care provider facilities must ensure that UC victims of sexual abuse and sexual harassment are placed in a supportive environment that provides the least restrictive housing option possible, subject to the requirements of 411.42. Paragraph (b) requires the care provider facility to employ multiple protection measures to ensure the safety and security of UC victims of sexual abuse and sexual harassment, including but not limited to: Housing changes or transfers for UC victims and/or abusers or harassers; removal of alleged UC abusers or harassers from contact with victims; and emotional support services for UCs or staff who fear retaliation for reporting sexual abuse and sexual harassment or cooperating with investigators. Under paragraph (c), a UC victim may be placed on one-on-one supervision in order to protect the UC. Before taking the UC off of one-on-one supervision, the care provider facility must complete a re-assessment taking into consideration any increased vulnerability of the UC as a result of the sexual abuse or sexual harassment. The re-assessment must be completed as soon as possible and without delay so that the UC is not on one-on-one supervision longer than is absolutely necessary for safety and security reasons. The UC should continue to receive all services, education, and recreation time while on one-on-one supervision to the greatest extent possible.

The NPREC also recommends that DHS never remove from the country or transfer to another facility immigration detainees who report sexual abuse before the investigation of that abuse is completed. ORR did not incorporate these NPREC recommendations in its rule, because ORR has no control over the removal of UCs from the United States. That is a decision for DHS and the immigration courts. With regard to transfers, the NPREC's report states that transfers disrupt a detainee's complaint lodged against a DHS facility. Outside agencies investigate all allegations at ORR care provider facilities, and investigations should continue to completion regardless of whether a UC is transferred or not. If the UC is released from ORR care and custody, ORR care provider facilities should work with the investigating agencies to ensure the care provider facility follows any procedures necessary to continue cooperation with investigators once the release occurs. If the UC has a protracted stay in ORR care and custody and the investigating agency requests that a UC stay in the jurisdiction, ORR will make best efforts not to transfer the child to a different care provider facility. Once UCs are released from ORR care, ORR no longer has jurisdiction over the UC. ORR is not an enforcement agency and cannot monitor UCs in the community, but ORR will request that the law enforcement agency local to the care provider facility advise the UC on how to protect him- or herself once he/she is released either in the same jurisdiction or elsewhere. In addition, care provider facilities, as part of their agreements with investigating authorities as required under section 411.22, will work with investigating authorities to request that investigations not be closed simply because a UC leaves the jurisdiction.

Subpart H—ORR Incident Monitoring and Evaluation

Section 411.71 discusses the requirements of ORR incident monitoring and evaluation after an allegation of sexual abuse or sexual harassment is made. The NPREC has recommended standards regarding the investigative agency's duty to investigate to completion all allegations of sexual abuse, what to include in criminal and administrative investigations, and evidence standards for administrative investigations. Since ORR does not conduct criminal or administrative investigations, it did not include these standards. Instead, ORR monitors and evaluates care provider facilities on a regular basis to ensure they are following ORR policies and procedures as well as relevant legal authorities in accordance with their cooperative agreements or contract terms. In addition, if an incident occurs, ORR will also monitor and evaluate a care provider facility to determine if ORR policies and procedures as well as relevant legal authorities were followed and what corrective actions, if any, are needed. ORR does not conduct criminal investigations, collect evidence, or investigate the substance of the allegation. All care provider facilities, except emergency care provider facilities not licensed by a State or local agency, are overseen by State or local licensing agencies and Child Protective Services who are required to investigate such allegations. As such, ORR is committed to ensuring that all allegations of sexual abuse and sexual harassment are referred to outside investigating agencies with the authority to conduct investigations. Under paragraph (a), upon receiving an allegation of sexual abuse or sexual harassment, ORR will monitor and evaluate the care provider facility to determine if the care provider facility did not comply with the requirements of this section or ORR policies and procedures. Once an outside investigation is completed, ORR must review any available completed investigation reports to determine whether additional monitoring and evaluation activities are required.

Paragraph (b) also requires that ORR develop written policies and procedures for incident monitoring and evaluation of sexual abuse and sexual harassment allegations, including provisions requiring: (1) Reviewing prior complaints and reports of sexual abuse and sexual harassment involving the suspected perpetrator; (2) determining whether actions or failures to act at the care provider facility contributed to the abuse or harassment; (3) ensuring that all ORR policies and procedures or relevant legal authorities were followed; and (4) retention of such reports for as long as the alleged abuser or harasser is in ORR custody or employed by ORR or the care provider, plus ten years. Paragraph (c) requires ORR to ensure that its incident monitoring and evaluation does not interfere with any investigation conducted by State or local Child Protective Services, State or local licensing agencies, or law enforcement. Paragraph (d) requires that when outside agencies investigate an allegation of sexual abuse or sexual harassment, the care provider facility and ORR must fully cooperate with outside investigators.

Section 411.72 requires that ORR must, when feasible, notify the UC of the result of the investigation if the UC is still in ORR care and custody following an investigation. If a UC is no longer in ORR custody when investigation results are provided, ORR must attempt to notify the UC of the results where feasible. ORR may use the contact information of the person, organization, or entity the UC was released to in attempting to contact the UC, but ORR is not required to locate a UC if he/she is no longer at the address where he/she was released. The NPREC also recommends that the agency notify other complainants or additional parties that were notified of the allegation of the outcome of the investigation. ORR modified this recommendation, because ORR is not the investigating agency. ORR would not always have contact information about any other complainants and cannot notify reporting parties if they were made anonymously. ORR does not have all the information that an investigating agency would have. Instead, ORR will encourage the investigating agency to notify other complainants, or additional parties notified of the allegation, of the outcome of the investigation.

Subpart I—Interventions and Discipline

Section 411.81 addresses disciplinary sanctions for care provider facility staff for violations of ORR or the care provider facility's sexual abuse and sexual harassment-related policies and procedures. Paragraph (a) requires care provider facilities to take disciplinary action up to and including termination against any staff member with a substantiated allegation of sexual abuse or sexual harassment against them or for violating ORR or care provider facility's sexual abuse and sexual harassment policies and procedures. For staff who engaged in sexual abuse or sexual harassment, termination must be the presumptive disciplinary sanction under paragraph (b). In addition, all terminations for violations of ORR or care provider facility sexual abuse and sexual harassment policies and procedures, or resignations by staff who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies. Under paragraph (d), any staff member with a substantiated allegation of sexual abuse or sexual harassment against him/her at an ORR care provider facility is barred from employment at any ORR care provider facility.

Section 411.82 discusses corrective actions for contractors and volunteers who engaged in sexual abuse or sexual harassment or violated ORR or the care provider facilities' sexual abuse and sexual harassment-related policies and procedures. Under paragraph (a), any contractor or volunteer who is the subject of a substantiated allegation of sexual abuse or sexual harassment must be prohibited from working or volunteering at the care provider facility and at any ORR care provider facility. Paragraph (b) requires the care provider facility to take appropriate remedial measures and to consider whether to prohibit further contact with UCs by contractors or volunteers who have not engaged in sexual abuse or sexual harassment but have violated other provisions within these standards, ORR sexual abuse and sexual harassment policies and procedures, or the care provider's sexual abuse and sexual harassment policies and procedures.

Section 411.83 addresses interventions for UCs who engage in sexual abuse. UCs must receive appropriate interventions if they engage in UC-on-UC sexual abuse. Decisions regarding which types of interventions to use in particular cases, including treatment, counseling, or educational programs, are made with the goal of promoting improved behavior by the UC and ensuring the safety of other UCs and staff. Considering the age and background of the UC, the appropriate intervention plan should be created to encourage and assist the UC to improve his/her behavior.

The NPREC made recommendations regarding the imposition of disciplinary sanctions after a finding that a UC engaged in sexual abuse. ORR, however, did not include these recommendations, because care provider facilities do not discipline UCs in a punitive manner. Incidents of UC-on-UC abuse are referred to all investigating authorities, including law enforcement entities, and a UC who poses a danger to him- or herself, to others, or the community may also be transferred to a higher level of care, such as a staff-secure or secure care provider facility. The decision to transfer, however, is not determined as a result of a disciplinary sanction but is determined based on safety concerns and the needs of the UC, as is any lateral transfer or transfer to a higher level of care. If necessary, a UC may also be transferred to a therapeutic care provider facility or residential treatment center if recommended by the care provider's clinician and/or psychiatric assessment. ORR will always ensure that the UC victim is protected from the alleged perpetrator. This may include but is not limited to keeping the victim and alleged perpetrator physically separate and housed in separate parts of the care provider facility; laterally transferring a UC based on the UC's needs; or transferring the alleged perpetrator to a higher-level of care if he/she continues to pose a danger to him- or herself, to others, or the community.

Rather than imposing disciplinary sanctions to control UC behavior, care provider facilities use positive reinforcement via a token economy system. UCs receive extra privileges or the ability to participate in extra activities, such as a movie night, when they exhibit positive or ''good'' behavior. UCs may not be able to participate in extra activities if they do not exhibit good behavior, but UCs never have services taken away nor are they ever placed in isolation for disciplinary reasons.

Subpart J—Medical and Mental Health Care

Section 411.91 addresses medical and mental health assessments and histories of sexual abuse. Under paragraph (a), if the assessment pursuant to section 411.41 indicates that a UC experienced prior sexual victimization or perpetrated sexual abuse, the care provider facility must ensure that the UC is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Care provider facility staff must also ensure that all UCs disclosures are reported in accordance with these standards. All UCs in ORR care regularly meet with care provider facility clinicians and case managers. If, however, the UC requires a higher level of medical or mental health care as a result of past sexual victimization or perpetrated sexual abuse, the care provider facility will refer the UC to qualified medical or mental health providers. After a referral for medical or mental health follow-up is initiated, the care provider facility must ensure that the UC receives a health evaluation no later than seventy-two (72) hours after the referral under paragraph (b). If the referral is for a mental health follow-up, the care provider facility must ensure that the UC receives a mental health evaluation no later than 72 hours after the referral under paragraph (c).

Section 411.92 covers access to emergency medical and mental health services. ORR provides regular and emergency medical and mental health care for all UCs in its care at all times, but the following standards are set forth to reiterate the importance of immediately providing medical services and crisis intervention services for sexual abuse victims. Regular medical, mental health, and crisis intervention services provided in the normal course of business are reported to ORR in accordance with its policies and procedures. Likewise, any medical, mental health, or crisis intervention services provided for sexual abuse victims must also be timely reported to ORR in accordance with ORR policies and procedures. Paragraph (a) requires care provider facilities to provide UCs who are victims of sexual abuse that occurred while in ORR care timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where appropriate under medical or mental health professional standards. Such services must be reported to ORR in accordance with ORR's policies and procedures. Paragraph (b) requires care provider facilities to provide victims access to all medical treatment and crisis intervention services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. UCs should receive immediate medical and mental health treatment any time that it is needed. The NPREC's report made recommendations for when no qualified medical or mental health practitioner are on duty at the time a report of recent abuse is made. ORR did not include these standards, because if there is a medical emergency, care provider facilities take UCs to the local hospital emergency room. Unlike juvenile facilities that have their own medical staff because residents may not leave the facility premises, UCs do not have to receive their medical services at the residential care provider facility. UCs are often taken out in the community to see specialists, dentists, and in the case of emergencies, to the emergency room.

ORR is mindful that some potential and existing grantees and contractors may have religious or moral objections to providing certain kinds of services, including referrals (for example, for emergency contraception). ORR is committed to providing resources and referrals for the full range of legally permissible services to UCs who need them, helping to facilitate access to these options, and doing so in a timely fashion and in a manner that respects the diverse religious and cultural backgrounds of UCs. At the same time, ORR is also committed to finding ways for organizations to partner with us, even if they object to providing specific services on religious grounds.

The following are ways in which organizations with such objections may be able to participate in human services programs. (1) Serve as sub-grantees—In many cases, sub-grantees do not need to provide every service for which the grantee is responsible, so long as all UCs served have access to all services required under the grant in a timely and respectful manner. Grantees must ensure that their overall program provides all of the required services, but grantees can use sub-grantees to provide some services. Under this arrangement, as long as other sub-grantees are readily available to provide UCs with the objected-to services, a sub-grantee may participate in the grant program while declining to provide services to which they have a religious objection. (2) Apply in a consortium—A second possibility is for faith-based organizations to apply in a consortium with one or more partners. The consortium would allow for a division of responsibility consistent with each organization's principles. Again, as long as UCs have timely access to all required services, different organizations could divide up the services provided. (3) Notify grantor—In some circumstances, another way in which the grantee could ensure access to any program services would be for the grantee to notify the federal program office responsible for the grant if a UC, who has been informed of the available services, may qualify for or be entitled to any program services, including referrals, to which the organization has a religious objection. It would then be the federal agency's responsibility to secure the provision of the needed services, or, if appropriate, transfer the case to another provider.

For example, if a UC requested emergency contraception but the grantee that housed the UC objected to providing such services on religious or moral grounds, the grantee need only provide notification to ORR in accordance with ORR policies and procedures that the UC requested such services. The grantee is not required to provide further information or services to the UC in relation to the UC's request. Once notified, ORR would then have its Federal staff coordinate the provision of such services for the UC, and the grantee need only allow the UC access to the Federal staff member in order to provide the services. If necessary, the ORR staff member would also coordinate transportation to and from the location where the services are provided.

All care provider facilities must provide for all the requirements under this subpart but the provision of the requirements are also subject to ORR's faith-based policy language described above. ORR will consider any combination of the approaches described above and is specifically requesting public comment for other approaches that would accomplish the goal of ensuring that UCs have access to a full range of services while enabling qualified faith-based organizations to participate in the delivery of those services in a manner consistent with their principles. ORR is committed to working with all grantee and contractors to fulfill their requirements under this rule in a manner that is respectful and sensitive to the grantee and contractor's principles and beliefs.

Section 411.93 addresses ongoing medical and mental health care for sexual abuse and sexual harassment victims and abusers. ORR provides regular medical care and mental health services, as stated in the last section, but these standards reiterate the importance of close, continued care for UC victims of sexual abuse and sexual harassment. Paragraph (a) requires care provider facilities to offer ongoing medical and mental health evaluations and treatment to all UCs who were sexually abused or sexually harassed while in ORR care and custody. In addition, the evaluation and treatment of such victims must include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in other care provider facilities or their release from ORR care and custody under paragraph (b). Paragraph (c) requires care provider facilities to provide victims with medical and mental health services consistent with the community level of care.

Under paragraph (d), care provider facilities must ensure that female UC victims of sexual abuse by a male abuser while in ORR care and custody are offered pregnancy tests, as necessary. If pregnancy results from an instance of sexual abuse, the care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services. Care provider facilities must also ensure that all UC victims of sexual abuse that occurred while in ORR care and custody are offered tests for sexually transmitted infections as medically appropriate under paragraph (e). Under paragraph (f), care provider facilities must ensure that UC victims are provided access to treatment services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. Finally, paragraph (g) requires care provider facilities to attempt to conduct a mental health evaluation of all known UC-on-UC abusers within seventy-two (72) hours of learning of such abuse and/or abuse history and offer treatment when deemed appropriate by mental health practitioners. In order for UCs to make informed decisions regarding medical services, care provider facilities should engage the UC in discussions with family members or attorneys of record in accordance with section 411.55 to the extent practicable and follow the appropriate State laws regarding the age of consent for medical procedures. As discussed above (see pages 71–72), insofar as care provider facilities may have religious objections to making such services available, the Federal government, consistent with its faith-based policy, is open to considering options whereby UC would be informed of available services, and the care provider would meet its obligations by notifying the grantor of requests for services.

The NPREC recommends that all immigration detainees are counseled about the immigration consequences of a positive HIV test at the time they are offered HIV testing. ORR did not include this standard, because the Department of Health and Human Services changed its regulations in 42 CFR part 34 to remove HIV infection from the list of communicable diseases of public health significance that would make foreign nationals inadmissible to the United States. The new rule took effect on January 4, 2010, so the NPREC's recommended standard is no longer applicable.

Subpart K—Data Collection and Review

Section 411.101 addresses the requirements to conduct sexual abuse and sexual harassment incident reviews. Sexual abuse and sexual harassment incident reviews are internal reviews completed by care provider facilities and are separate from sexual abuse and sexual harassment investigations, which are conducted by law enforcement, the Child Protective Services agency, and/or the State or local licensing agency. The main purpose of sexual abuse and sexual harassment incident reviews is to determine if the care provider facility's policies and procedures could be improved or changed in light of the incident or allegation. Sexual abuse and sexual harassment incident reviews are conducted at the conclusion of an outside investigation and should not interfere with any ongoing investigations. Under paragraph (a), care provider facilities must conduct a sexual abuse or sexual harassment incident review at the conclusion of every investigation of sexual abuse and sexual harassment and prepare a written report if the allegation was either substantiated or unable to be substantiated, but not determined to be unfounded. The written report must evaluate whether the incident review and/or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and sexual harassment. The care provider facility must implement the recommendations for improvement or must document its reason for not doing so in a written response. Both the report and response must be forwarded to ORR's Prevention of Sexual Abuse Coordinator. Care provider facilities must also collect accurate, uniform data for every reported incident of sexual abuse and sexual harassment using a standardized instrument and set of definitions. Under paragraph (b), on an annual basis, the care provider facility must conduct a review of all sexual abuse and sexual harassment investigations and resulting incident reviews to assess and improve sexual abuse and sexual harassment detection, prevention, and response efforts. The results and findings of the annual review must be provided to ORR's Prevention of Sexual Abuse Coordinator. The NPREC recommendation goes into specific detail regarding who is required to review the incident and what to review. Instead, ORR provides a standard that requires the care provider facility to determine if any policies or practices should be changed and to provide recommendations for improvement. Factors that the NPREC recommends facilities consider, such as racial motivation or group dynamics are not as relevant for ORR care provider facilities, because the population of UCs at any given care provider facility will change often, as UCs are released on an average after 35 days.

Section 411.102 addresses data collection requirements. The purpose of this section is to regularly gather and report aggregated information to detect patterns so that future incidents may be prevented at care provider facilities. Paragraph (a) requires that care provider facilities maintain all case records associated with claims of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling in accordance with these standards and applicable Federal and State laws and ORR policies and procedures. Under paragraph (b), the PSA Compliance Manager, on an ongoing basis, must work with the care provider facility management and ORR to share data regarding effective care provider facility response methods to sexual abuse and sexual harassment. Paragraph (c) requires the PSA Compliance Manager to prepare a report for ORR on a quarterly basis that compiles information about incidents and allegation of sexual abuse and sexual harassment as well as ongoing investigations and other pending cases. Under paragraph (d), the PSA Compliance Manager must annually aggregate incident-based sexual abuse and sexual harassment data in his/her care provider facility and provide it to ORR from the previous year no later than August 31 of the next calendar year.

The NPREC also recommends that facilities collect additional data whenever the immigration detainee is the victim or perpetrator of an incident of sexual abuse in custody. The additional incident-based data collected should indicate whether the victim and/or perpetrator was an immigration detainee, his or her status at the initiation of the investigation, and his or her status at the conclusion of the investigation. ORR did not include this standard, because UCs are not in ORR custody for a long period of time. UCs have an average length of stay of 35 days in ORR care, and most immigration cases and investigations are still ongoing when a release occurs. Once a UC is released, ORR does not track or have the ability to collect immigration information regarding the UC. Therefore, ORR is not able to collect the type of information that the NPREC recommends.

Section 411.103 covers how the collected data should be analyzed, reported, and used to prevent future incidents. Paragraph (a) requires that ORR review data collected and aggregated pursuant to sections 411.101 and 411.102 in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, practices, and training. ORR's assessment should include identifying problem areas, taking corrective actions on care provider facilities on an ongoing basis, and preparing an annual report of its findings and corrective actions for each care provider facility as well as ORR as a whole. Under paragraph (b), ORR's report must include a comparison of the current year's data and corrective actions with those from prior years. In addition, the report must provide an assessment of ORR's progress in preventing, detecting, and responding to sexual abuse and sexual harassment. Paragraph (c) requires that the Director of ORR approve ORR's annual report on ORR's UC Program as a whole and make the report available to the public through its Web site or otherwise make the report readily available to the public. Paragraph (d) allows ORR to redact specific material from the reports when appropriate for safety and security but must indicate the nature of the material redacted when releasing the report to the public.

Section 411.104 addresses how data related to sexual abuse and sexual harassment should be stored, published, and destroyed. ORR is committed to protecting the safety and security of all UCs in its care and custody and, therefore, must ensure that all data collected related to sexual abuse and sexual harassment is protected. Under paragraph (a), ORR must ensure that data collected pursuant to sections 411.101 and 411.102 is securely retained in accordance with Federal and State laws and ORR record retention policies. Paragraph (b) requires that ORR make all aggregated sexual abuse and sexual harassment data from ORR care provider facilities with which it provides a grant to or contracts with available to the public at least annually on its Web site consistent with existing ORR information disclosure policies and procedures. The aggregated data excludes data from secure care providers, as those care provider facilities must follow the Department of Justice's Standards to Prevent, Detect, and Respond to Prison Rape and will report to DOJ accordingly. Information regarding secure care providers will be available from DOJ. Also excluded from the aggregated data is information for traditional foster care providers. Before making any type of aggregated sexual abuse and sexual harassment data publicly available, however, ORR must remove all personal identifiers under paragraph (c). Paragraph (d) requires that ORR maintain sexual abuse and sexual harassment data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires the disposal of official information in less than 10 years.

Subpart L—Audits and Corrective Action

Section 411.111 addresses the frequency and scope of audits. Paragraph (a) states that ORR will ensure that an audit of each care provider facility is completed within three years and 60 days after the effective date of the standards and at least once during each three-year period thereafter. ORR may, in its discretion, expedite the audit of a particular care provider facility if ORR has reason to believe the care provider facility is experiencing problems related to sexual abuse and sexual harassment under paragraph (b). Paragraph (c) requires that ORR develop and issue an instrument that is coordinated with the HHS Office of the Inspector General that will provide guidance on the conduct and contents of the audit. Paragraphs (d)–(m) describe the types of documents and access the auditor must be provided when auditing a care provider facility. Paragraph (n) ensures that all sensitive and confidential information that an auditor has access to be properly handled by the auditor, and that the auditor is required to safeguard such information. Paragraph (o) places an affirmative burden on the care provider facility to demonstrate compliance with the standards to the auditor.

Section 411.112 addresses the qualifications required for auditors. Paragraph (a) requires that audits must be conducted by an entity or individual with relevant auditing or evaluation experience and is external to ORR. Under paragraphs (b) and (c), auditors must be certified and trained by ORR and cannot receive financial compensation from ORR other than compensation related to conducting an audit for three years prior or subsequent to an audit.

Section 411.113 addresses the contents and findings of audits. Paragraph (a) requires that audits must include certification by the auditor that there are no conflicts of interest between the auditor and the care provider facility under review. Paragraphs (b)–(d) address the standards that care provider facilities must meet and the methodology, sampling sizes, and basis for the auditor's conclusions. Under paragraph (e), auditors must redact personally identifiable UC or staff information from their reports but provide such information upon ORR request. Then, under paragraph (f), ORR will publish aggregated data on final audit reports on ORR's Web site or otherwise make it readily available to the public.

Section 411.114 discusses audit corrective action plans. If a care provider facility received a finding of ''Does Not Meet Standard'' with one or more standards, a 180-day corrective action period is triggered under paragraph (a). The auditor and ORR will work to create a corrective action plan to achieve compliance, and the auditor must take steps to verify implementation of the corrective action plan under paragraphs (b) and (c). Under paragraph (d), after the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action.

Paragraph (e) requires that if the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it has achieved compliance.

Section 411.115 addresses audit appeals. Paragraph (a) allows care provider facilities to file an appeal with ORR regarding any specific audit finding that it believes are incorrect. Such an appeal must be filed within 90 days of the auditor's final determination. Under paragraph (b), if ORR determines that the care provider facility has stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility, though, must bear the costs of the re-audit. Under paragraph (c), the findings of the re-audit are considered final.

V. Waiver of Proposed Rulemaking

HHS will ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substances of the proposed rule or a description of the subjects and issues involved. However, under section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), a general notice of proposed rulemaking is not required when an agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued. HHS has determined that it would be contrary to the public interest to delay finalizing the provisions of this regulation until a public notice and comment process is complete.

HHS believes that implementing standards that govern the detection, prevention, and response to the sexual abuse and sexual harassment of UCs as soon as possible is of such importance that publishing a notice of proposed rulemaking would be contrary to the public interest. Section 1101(c) of the Violence Against Women Reauthorization Act (VAWA 2013) directs the Secretary of Health and Human Services to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of UCs within 180 days of the enactment of VAWA 2013, which was on March 7, 2013. In creating a 180-day deadline, HHS believes it was Congress' intent for HHS to issue national standards as quickly as possible so that UCs have specific protections put in place to detect, prevent, reduce, and punish sexual abuse and sexual harassment. Once this rule is published, it will take up to a year to implement all standards at all care provider facilities. To prevent further delay, HHS determined that it should issue an interim final rule instead of a notice of proposed rulemaking in order to begin implementation of these standards as soon as possible. Issuing this regulation on an interim basis is necessary and in the public interest in order to prevent, detect, and respond to the sexual abuse and sexual harassment of UCs in ORR care and custody. It would be contrary to the public interest and to Congress' intent to delay the implementation of this rule.

Based on HHS' determination that a delay of these rules would be contrary to the public interest, HHS finds good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. HHS will take and carefully consider public comments for the interim final rule and make any appropriate changes. HHS is providing a 60-day public comment period and will address comments received before the rule is finalized. We plan to finalize the rule within one year of implementation.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), HHS is required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a control number assigned by OMB.

This interim final rule with comment requires information collections for which HHS plans to seek OMB approval at a later date. The information collection requirements associated with this interim final rule will not take effect until approved by OMB. HHS will issue future **Federal Register** notices to seek comments on its information collections as required by 3506(c)(2)(A) of the Paperwork Reduction Act within one month following finalization, and will include the following information collections as described below:

- Section 411.11(c): Care provider facilities must maintain culturally-sensitive written policies mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility's approach to detecting, preventing, and responding to such conduct. The policies must be tailored for a diverse population and approved by ORR.
- Section 411.16(b): Care provider facilities must solicit information from job applicants and employees considered for promotion about previous misconduct. If a job applicant previously worked at an institution, care provider facilities must make efforts to solicit information regarding previous misconduct related to sexual abuse and sexual harassment.
- Section 411.16(c) and (d): Care provider facilities must produce background investigation results and documentation to ORR, upon request, for job applicants, volunteers, and contractors.
- Section 411.16(g): Care provider facilities must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work.
- Section 411.22(a)–(c): Care provider facilities are required to report allegations of sexual abuse and sexual harassment to ORR and all appropriate investigating authorities. Care provider facilities must maintain documentation of all reports and referrals of allegations for at least ten years. Care provider facilities must also maintain copies of all agreements or documentation showing attempts to enter into agreements with law enforcement agencies, State or local Child Protective Services, and State or local licensing agencies.
- Sections 411.31(c) and 411.32(c): Care provider facilities must maintain written documentation that employees, contractors, and volunteers have completed required trainings.
- Section 411.33(a), (c)–(e): Care provider facilities must disclose information to UCs regarding the care provider facility's zero tolerance policies in an age and culturally appropriate fashion. All disclosures must be documented.
- Section 411.34(b): Care provider facilities must maintain documentation that medical and mental health practitioners employed or contracted by the care provider facility received required trainings.
- Section 411.51: Care provider facilities must provide information to UCs regarding methods of reporting and contact information to report allegations of sexual abuse and sexual harassment.

Care provider facilities must also maintain agreements or attempts to enter into agreements with entities that can receive and immediately forward UC reports. Reports made verbally must be documented, and all allegations must be reported to ORR.

- Section 411.52(c): Care provider facilities must have written procedures for identifying and handling time-sensitive grievances that involve immediate threats to UC health, safety, or welfare related to sexual abuse and sexual harassment, and all such grievances must be reported to ORR.
- Section 411.53: Care provider facilities must maintain agreements or attempts to enter agreements with community service providers to provide legal advocacy and confidential emotional support services for UC victims of sexual abuse and sexual harassment. Care provider facilities must also have written policies and procedures to include outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols. Finally, care provider facilities must disclose information to UCs about these local organizations and the assistance they can provide to UC victims of sexual abuse and sexual harassment.
- Section 411.54: ORR provides a method to receive third-party reports of sexual abuse and sexual harassment.
- Section 411.61(a)–(b), (d)–(f): Care provider facility staff, volunteers, and contractors are required to report to ORR and third-parties any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment, retaliation, or staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. Care provider facilities must disclose allegations of sexual abuse and sexual harassment to a victim's parents or legal guardians with the UC victim's consent as well as his/her attorney of record, if applicable.
- Section 411.63: Care provider facilities that receive an allegation that a UC was sexually abused while at another care provider facility must immediately report the allegation to ORR. The care provider facility reporting the incident must document that it provided notification to ORR and must also report the allegation to appropriate investigators.
- Sections 411.81(c) and 411.82(a): Care provider facilities must report to law enforcement any staff, contractor, or volunteer who has engaged in sexual abuse or sexual harassment.
- Section 411.101: Care provider facilities are required to collect certain data at the conclusion of every investigation of sexual abuse and sexual harassment and, where the allegation was either substantiated or unable to be substantiated but not determined to be unfounded, must prepare a report. Care provider facilities must also conduct an annual review of all sexual abuse and sexual harassment investigations and provide the results and findings to ORR.
- Section 411.102: Care provider facilities must maintain case records associated with claims of sexual abuse and sexual harassment and the Prevention of Sexual Abuse Compliance Manager must share data with ORR regarding effective care provider facility response methods to sexual abuse and sexual harassment. The PSA Compliance Manager must also prepare a report for ORR compiling information and aggregate incident-based sexual abuse and sexual harassment data. Care provider facilities must also provide information to ORR upon request.
- Section 411.113: Audits must contain certain information outlined in this section regarding a care provider facility's compliance with the standards set forth in this rule.

We estimate the cost burden for these information collections per year will be approximately $900,000 for approximately 100 care provider facilities, with each care provider facility spending approximately 416 hours per year to complete the information collections.

VII. Regulatory Impact Analysis—Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. While there are some costs associated with these regulations, they are not economically significant as defined under E.O. 12866. However, the regulation is significant and has been reviewed by OMB.

Within the IFR, the only areas with associated Federal costs are: hiring new staff or converting existing staff to perform functions as a Prevention of Sexual Abuse Compliance Manager at care provider facilities; training/education, prevention planning; expanding reporting mechanisms; data collection; and conducting regular audits. This IFR has an approximately $6.21 million cost. This includes approximately 100 full-time staff at each care provider facility paid an average salary of $45,000 with fringe benefits at an average rate of 27%. The full-time staff will provide training/education and prevention planning as well as complete all reporting requirements and data collections. ORR estimates that an annual contract to complete audits will cost approximately $500,000 annually. This IFR will not only codify existing policies and procedures carried out by the UC Program but will also incorporate recommendations from the National Prison Rape Elimination Commission. This regulation will strengthen the protections and services unaccompanied children receive while in the care of ORR.

VIII. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This rule primarily affects the operations of the federal government, *i.e.,* the Office of Refugee Resettlement's (ORR) management of the care and custody of unaccompanied children. This rule is primarily intended to ensure that Federally-funded grantees protect, detect, and respond to the sexual abuse and sexual harassment of unaccompanied children in the care and custody of ORR as directed under VAWA 2013. We believe this rule implements the requirements of VAWA 2013 and assists care providers to continue providing a safe and secure environment and child-centered services for UC.

Specifically, as noted under the Collection of Information Requirements section of this preamble, we estimate the cost of implementing the new reporting requirements will be approximately $900,000 annually, which when applied to approximately 100 grantees nationally, results in a cost per grantee of approximately $9,000. In developing this estimate, we assumed that each of the 100 grantees would spend a total of 416 hours to comply with reporting and data collection requirements. Much of the costs associated with the reporting requirements of this rule, however, may be absorbed by existing grants, as several of the reporting requirements are already required under State and local licensing standards and existing ORR policies and procedures.

IX. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $141 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

X. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

XI. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy: strengthens or erodes family stability and the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

XII. Executive Order 13132

Executive Order 13132 on federalism requires that federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. This rule does not have federalism implications for state or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 411

Administrative practice and procedure, Child welfare, Immigration, Unaccompanied children, Reporting and recordkeeping requirements.

Dated: December 16, 2014.

Eskinder Negash,

Director, Office of Refugee Resettlement.

Dated: December 16, 2014.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: December 17, 2014.

Sylvia M. Burwell,

Secretary.

For the reasons discussed above, the Department of Health and Human Services adds part 411 to title 45 of the Code of Federal Regulations as follows:

PART 411—STANDARDS TO PREVENT, DETECT, AND RESPOND TO SEXUAL ABUSE AND SEXUAL HARASSMENT INVOLVING UNACCOMPANIED CHILDREN

Authority: 42 U.S.C. 15607 (d).

§ 411.5 General definitions.

For the purposes of this part, the following definitions apply:

ACF means the Administration for Children and Families.

Care provider facility means any ORR funded program that is licensed, certified, or accredited by an appropriate State or local agency to provide residential or group services to UCs, including a program of group homes or facilities for children with special needs or staff-secure services for children. Emergency care provider facilities are included in this definition but may or may not be licensed, certified, or accredited by an appropriate State or local agency.

Contractor means a person who, or entity that, provides services on a recurring basis pursuant to a contractual agreement with ORR or with a care provider facility or has a sub-contractual agreement with the contractor.

DHS means the Department of Homeland Security.

DOJ means the Department of Justice.

Director means the Director of the Office of Refugee Resettlement.

Emergency means a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action.

Emergency care provider facility is a type of care provider facility that is temporarily opened to provide temporary emergency shelter and services for UCs during an influx. Emergency care provider facilities may or may not be licensed by an appropriate State or local agency.

Exigent circumstances means any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security of a care provider facility or a threat to the safety and security of any person.

Gender refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex.

Gender identity refers to one's sense of oneself as male, female, or transgender.

Gender nonconforming means a person whose appearance or manner does not conform to traditional societal gender expectations.

HHS means the Department of Health and Human Services.

Intersex means a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.

LGBTQI means lesbian, gay, bisexual, transgender, questioning, or intersex.

Law enforcement means any local, State, or Federal enforcement agency with the authority and jurisdiction to investigate whether any criminal laws were violated.

Limited English proficient (LEP) means individuals for whom English is not the primary language and who may have a limited ability to read, write, speak, or understand English.

Medical practitioner means a health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified medical practitioner'' refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

Mental health practitioner means a mental health professional who, by virtue of education, credentials, and experience, is permitted by law to evaluate and care for patients within the scope of his or her professional practice. A ''qualified mental health practitioner'' refers to a professional who also has successfully completed specialized training for treating sexual abuse victims.

ORR refers to the Office of Refugee Resettlement.

Pat-down search means a sliding or patting of the hands over the clothed body of an unaccompanied child by staff to determine whether the individual possesses contraband.

Secure care provider facility is a type of care provider facility with a physically secure structure and staff responsible for controlling violent behavior. ORR uses a secure care provider facility as the most restrictive placement option for a UC who poses a danger to him or herself or others or has been charged with having committed a criminal offense. A secure care provider facility is a juvenile detention center.

Sex refers to a person's biological status and is typically categorized as male, female, or intersex. There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

Sexual Assault Forensic Examiner (SAFE) means a ''medical practitioner'' who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

Sexual Assault Nurse Examiner (SANE) means a registered nurse who has specialized forensic training in treating sexual assault victims and conducting forensic medical examinations.

Special needs means mental and/or physical conditions that require special services and treatment by staff. A UC may have special needs due to a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102(2).

Staff means employees or contractors of ORR or a care provider facility, including any entity that operates within a care provider facility.

Strip search means a search that requires a person to remove or arrange some or all clothing so as to permit a visual inspection of the person's breasts, buttocks, or genitalia.

Substantiated allegation means an allegation that was investigated and determined to have occurred.

Traditional foster care means a type of care provider facility where a UC is placed with a family in a community-based setting. The State or locally licensed foster family is responsible for providing basic needs in addition to responsibilities as outlined by the State or local licensed child placement agency, State and local licensing regulations, and any ORR policies related to foster care. The UC attends public school and receives on-going case management and counseling services. The care provider facility facilitates the provision of additional psychiatric, psychological, or counseling referrals as needed. Traditional foster care may include transitional or short-term foster care as well as long-term foster care providers.

Transgender means a person whose gender identity (*i.e.*, internal sense of feeling male or female) is different from the person's assigned sex at birth.

Unaccompanied child (UC) means a child:

(1) Who has no lawful immigration status in the United States;

(2) Who has not attained 18 years of age; and

(3) With respect to whom there is no parent or legal guardian in the United States or there is no parent or legal guardian in the United States available to provide care and physical custody.

Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

Volunteer means an individual who donates time and effort on a recurring basis to enhance the activities and programs of ORR or the care provider facility.

Youth care worker means employees primarily responsible for the supervision and monitoring of UCs in housing units, educational areas, recreational areas, dining areas, and other program areas of a care provider facility.

§ 411.6 Definitions related to sexual abuse and sexual harassment.

For the purposes of this part, the following definitions apply:

Sexual abuse means—

(1) Sexual abuse of a UC by another UC; and

(2) Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer.

Sexual abuse of a UC by another UC includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument; and

(4) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Sexual abuse of a UC by a staff member, grantee, contractor, or volunteer includes any of the following acts, with or without the consent of the UC:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(2) Contact between the mouth and the penis, vulva, or anus;

(3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, grantee, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;

(6) Any attempt, threat, or request by a staff member, grantee, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;

(7) Any display by a staff member, grantee, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of a UC; and

(8) Voyeurism by a staff member, grantee, contactor, or volunteer.

Sexual harassment includes—

(1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, other electronic communication, or actions of a derogatory or offensive sexual nature by one UC towards another; and

(2) Repeated verbal comments, gestures, phone calls, emails, texts, social media messages, pictures sent or shown, or other electronic communication of a sexual nature to a UC by a staff member, grantee, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

Voyeurism by a staff member, grantee, contractor, or volunteer means an invasion of privacy of a UC by a staff member, grantee, contractor, or volunteer for reasons unrelated to official duties, such as inappropriately viewing a UC perform bodily functions or bathing; requiring a UC to expose his or her buttocks, genitals, or breasts; or recording images of all or part of a UC's naked body or of a UC performing bodily functions.

Subpart A—Coverage

§ 411.10 Coverage of ORR care provider facilities.

(a) This part applies to all ORR care provider facilities except secure care provider facilities and traditional foster care homes. Secure care provider facilities must, instead, follow the Department of Justice's National Standards to Prevent, Detect, and Respond to Prison Rape, 28 CFR part 115. Traditional foster care homes are not subject to this part.

(b) Emergency care provider facilities are subject to every section in this part except:

(1) Section 411.22(c);

(2) Section 411.71(b)(4);

(3) Section 411.101(b);

(4) Section 411.102(c), (d), and (e); and

(5) Subpart L.

(c) Emergency care provider facilities must implement the standards in this rule, excluding the standards listed above, within fifteen (15) days of opening. The Director, however, may, using unreviewable discretion, waive or modify specific sections for a particular emergency care provider facility for good cause. Good cause would only be found in cases where the temporary nature of the emergency care provider facility makes compliance with the provision impracticable or impossible, and the Director determines that the emergency care provider facility could not, without substantial difficulty, meet the provision in the absence of the waiver or modification.

(d) For the purposes of this part, the terms related to sexual abuse and sexual harassment refer specifically to the sexual abuse or sexual harassment of a UC that occurs at an ORR care provider facility while in ORR care and custody. Incidents of past sexual abuse or sexual harassment or sexual abuse or sexual harassment that occurs in any other context other than in ORR care and custody are not within the scope of this regulation.

Subpart B—Prevention Planning

§ 411.11 Zero tolerance toward sexual abuse and sexual harassment; Prevention of Sexual Abuse Coordinator and Compliance Manager.

(a) ORR must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining ORR's approach to preventing, detecting, and responding to such conduct. ORR must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population.

(b) ORR must employ or designate an upper-level, ORR-wide Prevention of Sexual Abuse Coordinator (PSA Coordinator) with sufficient time and authority to develop, implement, and oversee ORR efforts to comply with these standards in all of its care provider facilities.

(c) Care provider facilities must have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the care provider facility's approach to preventing, detecting, and responding to such conduct. The care provider facility also must ensure that all policies and services related to this rule are implemented in a culturally-sensitive and knowledgeable manner that is tailored for a diverse population. ORR will review and approve each care provider facility's written policy.

(d) Care provider facilities must employ or designate a Prevention of Sexual Abuse Compliance Manager (PSA Compliance Manager) with sufficient time and authority to develop, implement, and oversee the care provider facility's efforts to comply with the provisions set forth in this part and serve as a point of contact for ORR's PSA Coordinator.

§ 411.12 Contracting with or having a grant from ORR for the care of UCs.

(a) When contracting with or providing a grant to a care provider facility, ORR must include in any new contracts, contract renewals, cooperative agreements, or cooperative agreement renewals the entity's obligation to adopt and comply with these standards.

(b) For organizations that contract, grant, or have a sub-grant with a care provider facility to provide residential services to UCs, the organization must, as part of the contract or cooperative agreement, adopt and comply with the provisions set forth in this part.

(c) All new contracts, contract renewals, and grants must include provisions for monitoring and evaluation to ensure that the contractor, grantee, or sub-grantee is complying with these provisions.

§ 411.13 UC supervision and monitoring.

(a) Care provider facilities must develop, document, and make their best effort to comply with a staffing plan that provides for adequate levels of staffing, and, where applicable under State and local licensing standards, video monitoring, to protect UCs from sexual abuse and sexual harassment.

(b) In determining adequate levels of UC supervision and determining the need for video monitoring, the care provider facility must take into consideration the physical layout of the facility, the composition of the UC population, the prevalence of substantiated and unsubstantiated incidents of sexual abuse and sexual harassment, and any other relevant factors. Video monitoring equipment may not be placed in any bathroom, shower or bathing area, or other area where UCs routinely undress.

(c) Care provider facilities must conduct frequent unannounced rounds to identify and deter sexual abuse and sexual harassment. Such rounds must be implemented during night as well as day shifts. Care provider facilities must prohibit staff from alerting others that rounds are occurring, unless such announcement is related to the legitimate operational functions of the care provider facility.

§ 411.14 Limits to cross-gender viewing and searches.

(a) Cross-gender pat-down searches of UCs must not be conducted except in exigent circumstances. For a UC that identifies as transgender or intersex, the ORR care provider facility must ask the UC to identify the gender of staff with whom he/she would feel most comfortable conducting the search.

(b) All pat-down searches must be conducted in the presence of one additional care provider facility staff member unless there are exigent circumstances and must be documented and reported to ORR.

(c) Strip searches and visual body cavity searches of UCs are prohibited.

(d) Care provider facilities must permit UCs to shower, perform bodily functions, and change clothing without being viewed by staff, except: In exigent circumstances; when such viewing is incidental to routine room checks; is otherwise appropriate in connection with a medical examination or monitored bowel movement; if a UC is under age 6 and needs assistance with such activities; a UC with special needs is in need of assistance with such activities; or the UC requests and requires assistance. If the UC has special needs and requires assistance with such activities, the care provider facility staff member must be of the same gender as the UC when assisting with such activities.

(e) Care provider facilities must not search or physically examine a UC for the sole purpose of determining the UC's sex. If the UC's sex is unknown, it may be determined during conversations with the UC, by reviewing medical records, or, if necessary, learning that information as part of a broader medical examination conducted in private by a medical practitioner.

(f) Care provider facilities must train youth care worker staff in proper procedures for conducting pat-down searches, including cross-gender pat-down searches and searches of transgender and intersex UCs. All pat-down searches must be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and existing ORR policy, including consideration of youth care worker staff safety.

§ 411.15 Accommodating UCs with disabilities and UCs who are limited English proficient (LEP).

(a) Care provider facilities must take appropriate steps to ensure that UCs with disabilities (including, for example, UCs who are deaf or hard of hearing, those who are blind or have low vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment. Such steps must include, when necessary to ensure effective communication with UCs who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, the care provider facility must ensure that any written materials related to sexual abuse and sexual harassment are translated and provided in formats or through methods that ensure effective communication with UCs with disabilities, including UCs who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

(b) Care provider facilities must take appropriate steps to ensure that UCs who are limited English proficient have an equal opportunity to participate in or benefit from all aspects of the care provider facility's efforts to prevent, detect, and respond to sexual abuse and sexual harassment, including steps to provide quality in-person or telephonic interpretive services and quality translation services that enable effective, accurate, and impartial interpretation and translation, both receptively and expressively, using any necessary specialized vocabulary.

(c) In matters relating to allegations of sexual abuse or sexual harassment, the care provider facility must provide quality in-person or telephonic interpretation services that enable effective, accurate, and impartial interpretation by someone other than another UC. Care provider facilities also must ensure that any written materials related to sexual abuse and sexual harassment, including notification, orientation, and instruction not provided by ORR, are translated either verbally or in written form into the preferred languages of UCs.

§ 411.16 Hiring and promotion decisions.

(a) Care provider facilities are prohibited from hiring or promoting any individual who may have contact with UCs and must not enlist the services of any contractor or volunteer who may have contact with UCs and who engaged in: Sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, other institution (as defined in 42 U.S.C. 1997), or care provider facility; who was convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion, or if the victim did not consent or was unable to consent or refuse; or who was civilly or administratively adjudicated to have engaged in such activity.

(b) Care provider facilities considering hiring or promoting staff must ask all applicants who may have direct contact with UCs about previous misconduct described in paragraph (a) of this section in written applications or interviews for hiring or promotions and in any interviews or written self-evaluations conducted as part of performance evaluations of current employees. Care provider facilities also must impose upon employees a continuing affirmative duty to disclose any such misconduct, whether the conduct occurs on or off duty. Care provider facilities, consistent with law, must make their best efforts to contact all prior institutional employers of an applicant for employment to obtain information on substantiated allegations of sexual abuse or sexual harassment or any resignation during a pending investigation of alleged sexual abuse or sexual harassment.

(c) Prior to hiring new staff who may have contact with UCs, the care provider facility must conduct a background investigation to determine whether the candidate for hire is suitable for employment with minors in a residential setting. Upon ORR request, the care provider facility must submit all background investigation documentation for each staff member and the care provider facility's conclusions.

(d) Care provider facilities also must perform a background investigation before enlisting the services of any contractor or volunteer who may have contact with UCs. Upon ORR request, the care provider facility must submit all background investigation documentation for each contractor or volunteer and the care provider facility's conclusions.

(e) Care provider facilities must either conduct a criminal background records check at least every five years for current employees, contractors, and volunteers who may have contact with UCs or have in place a system for capturing the information contained in a criminal background records check for current employees.

(f) Material omissions regarding such misconduct or the provision of materially false information by the applicant or staff will be grounds for termination or withdrawal of an offer of employment, as appropriate.

(g) Unless prohibited by law, the care provider facility must provide information on substantiated allegations of sexual abuse or sexual harassment involving a former employee upon receiving a request from another care provider facility or institutional employer for whom such employee has applied to work.

(h) In the event the care provider facility contracts with an organization to provide residential services and/or other services to UCs, the requirements of this section also apply to the organization and its staff.

§ 411.17 Upgrades to facilities and technologies.

(a) When designing or acquiring any new facility and in planning any substantial expansion or modification of existing facilities, the care provider facility, as appropriate, must consider the effect of the design, acquisition, expansion, or modification upon their ability to protect UCs from sexual abuse and sexual harassment.

(b) When installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology in a care provider facility, the care provider facility, as appropriate, must consider how such technology may enhance its ability to protect UCs from sexual abuse and sexual harassment while maintaining UC privacy and dignity.

Subpart C—Responsive Planning

§ 411.21 Victim advocacy, access to counselors, and forensic medical examinations.

(a) Care provider facilities must develop procedures to best utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs. Each care provider facility must establish procedures to make available outside victim services following incidents of sexual abuse and sexual harassment; the care provider facility must attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available or if the UC prefers, the care provider facility may provide a licensed clinician on staff to provide crisis intervention and trauma services for the UC. The outside or internal victim advocate must provide emotional support, crisis intervention, information, and referrals.

(b) Where evidentiarily or medically appropriate, and only with the UC's consent, the care provider facility must arrange for an alleged victim UC to undergo a forensic medical examination as soon as possible and that is performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination may be performed by a qualified medical practitioner.

(c) As requested by a victim, the presence of his or her outside or internal victim advocate, including any available victim advocacy services offered at a hospital conducting a forensic examination, must be allowed to the extent possible for support during a forensic examination and investigatory interviews.

(d) To the extent possible, care provider facilities must request that the investigating agency follow the requirements of paragraphs (a) through (c) of this section.

§ 411.22 Policies to ensure investigation of allegations and appropriate agency oversight.

(a) ORR and care provider facilities must ensure that each allegation of sexual abuse and sexual harassment, including a third-party or anonymous allegation, is immediately referred to all appropriate investigating authorities, including Child Protective Services, the State or local licensing agency, and law enforcement. Care provider facilities also must immediately report each allegation of sexual abuse and sexual harassment to ORR according to ORR policies and procedures. The care provider facility has an affirmative duty to keep abreast of the investigation(s) and cooperate with outside investigators. ORR also must remain informed of ongoing investigations and fully cooperate as necessary.

(b) Care provider facilities must maintain or attempt to enter into a written memorandum of understanding or other agreement specific to investigations of sexual abuse and sexual harassment with the law enforcement agency, designated State or local Child Protective Services, and/or the State or local licensing agencies responsible for conducting sexual abuse and sexual harassment investigations, as appropriate. Care provider facilities must maintain a copy of the agreement or documentation showing attempts to enter into an agreement.

(c) Care provider facilities must maintain documentation for at least ten years of all reports and referrals of allegations of sexual abuse and sexual harassment.

(d) ORR will refer an allegation of sexual abuse to the Department of Justice or other investigating authority for further investigation where such reporting is in accordance with its policies and procedures and any memoranda of understanding.

(e) All allegations of sexual abuse that occur at emergency care provider facilities operating on fully Federal properties must be reported to the Department of Justice in accordance with ORR policies and procedures and any memoranda of understanding.

Subpart D—Training and Education

§ 411.31 Care provider facility staff training.

(a) Care provider facilities must train or require the training of all employees who may have contact with UCs to be able to fulfill their responsibilities under these standards, including training on:

(1) ORR and the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment;

(2) The right of UCs and staff to be free from sexual abuse and sexual harassment and from retaliation for reporting sexual abuse and sexual harassment;

(3) Definitions and examples of prohibited and illegal sexual behavior;

(4) Recognition of situations where sexual abuse or sexual harassment may occur;

(5) Recognition of physical, behavioral, and emotional signs of sexual abuse and methods of preventing and responding to such occurrences;

(6) How to avoid inappropriate relationships with UCs;

(7) How to communicate effectively and professionally with UCs, including UCs who are lesbian, gay, bisexual, transgender, questioning, or intersex;

(8) Procedures for reporting knowledge or suspicion of sexual abuse and sexual harassment as well as how to comply with relevant laws related to mandatory reporting;

(9) The requirement to limit reporting of sexual abuse and sexual harassment to personnel with a need-to-know in order to make decisions concerning the victim's welfare and for law enforcement, investigative, or prosecutorial purposes;

(10) Cultural sensitivity toward diverse understandings of acceptable and unacceptable sexual behavior and appropriate terms and concepts to use when discussing sex, sexual abuse, and sexual harassment with a culturally diverse population;

(11) Sensitivity and awareness regarding past trauma that may have been experienced by UCs;

(12) Knowledge of all existing resources for UCs both inside and outside the care provider facility that provide treatment and counseling for trauma and legal advocacy for victims; and

(13) General cultural competency and sensitivity to the culture and age of UC.

(b) All current care provider facility staff and employees who may have contact with UCs must be trained within six months of the effective date of these standards, and care provider facilities must provide refresher information, as appropriate.

(c) Care provider facilities must document that staff and employees who may have contact with UCs have completed the training.

§ 411.32 Volunteer and contractor training.

(a) Care provider facilities must ensure that all volunteers and contractors who may have contact with UCs are trained on their responsibilities under ORR and the care provider facility's sexual abuse and sexual harassment prevention, detection, and response policies and procedures as well as any relevant Federal, State, and local laws.

(b) The level and type of training provided to volunteers and contractors may be based on the services they provide and the level of contact they will have with UCs, but all volunteers and contractors who have contact with UCs must be trained on the care provider facility's zero tolerance policies and procedures regarding sexual abuse and sexual harassment and informed how to report such incidents.

(c) Each care provider facility must maintain written documentation that contractors and volunteers who may have contact with UCs have completed the required trainings.

§ 411.33 UC education.

(a) During the intake process and periodically thereafter, each care provider facility must ensure that during orientation or a periodic refresher session, UCs are notified and informed of the care provider facility's zero tolerance policies for all forms of sexual abuse and sexual harassment in an age and culturally appropriate fashion and in accordance with § 411.15 that includes, at a minimum:

(1) An explanation of the UC's right to be free from sexual abuse and sexual harassment as well as the UC's right to be free from retaliation for reporting such incidents;

(2) Definitions and examples of UC-on-UC sexual abuse, staff-on-UC sexual abuse, coercive sexual activity, appropriate and inappropriate relationships, and sexual harassment;

(3) An explanation of the methods for reporting sexual abuse and sexual harassment, including to any staff member, outside entity, and to ORR;

(4) An explanation of a UC's right to receive treatment and counseling if the UC was subjected to sexual abuse or sexual harassment;

(b) Care provider facilities must provide the UC notification, orientation, and instruction in formats accessible to all UCs at a time and in a manner that is separate from information provided about their immigration cases.

(c) Care provider facilities must document all UC participation in orientation and periodic refresher sessions that address the care provider facility's zero tolerance policies.

(d) Care provider facilities must post on all housing unit bulletin boards who a UC can contact if he or she is a victim or is believed to be at imminent risk of sexual abuse or sexual harassment in accordance with § 411.15.

(e) Care provider facilities must make available and distribute a pamphlet in accordance with § 411.15 that contains, at a minimum, the following:

(1) Notice of the care provider facility's zero-tolerance policy toward sexual abuse and sexual harassment;

(2) The care provider facility's policies and procedures related to sexual abuse and sexual harassment;

(3) Information on how to report an incident of sexual abuse or sexual harassment;

(4) The UC's rights and responsibilities related to sexual abuse and sexual harassment;

(5) How to contact organizations in the community that provide sexual abuse counseling and legal advocacy for UC victims of sexual abuse and sexual harassment;

(6) How to contact diplomatic or consular personnel.

§ 411.34 Specialized training: Medical and mental health care staff.

(a) All medical and mental health care staff employed or contracted by care provider facilities must be specially trained, at a minimum, on the following:

(1) How to detect and assess signs of sexual abuse and sexual harassment;

(2) How to respond effectively and professionally to victims of sexual abuse and sexual harassment;

(3) How and to whom to report allegations or suspicions of sexual abuse and sexual harassment; and

(4) How to preserve physical evidence of sexual abuse. If medical staff conduct forensic examinations, such medical staff must receive training to conduct such examinations.

(b) Care provider facilities must document that medical and mental health practitioners employed or contracted by the care provider facility received the training referenced in this section.

(c) Medical and mental health practitioners employed or contracted by the care provider facility also must receive the training mandated for employees under § 411.31 or for contractors and volunteers under § 411.32, depending on the practitioner's status at the care provider facility.

Subpart E—Assessment for Risk of Sexual Victimization and Abusiveness

§ 411.41 Assessment for risk of sexual victimization and abusiveness.

(a) Within 72 hours of a UC's arrival at a care provider facility and periodically throughout a UC's stay, the care provider facility must obtain and use information about each UC's personal history and behavior using a standardized screening instrument to reduce the risk of sexual abuse or sexual harassment by or upon a UC.

(b) The care provider facility must consider, at a minimum and to the extent that the information is available, the following criteria to assess UCs for risk of sexual victimization:

(1) Prior sexual victimization or abusiveness;

(2) Any gender nonconforming appearance or manner or Self-identification as lesbian, gay, bisexual, transgender, questioning, or intersex and whether the resident may therefore be vulnerable to sexual abuse or sexual harassment;

(3) Any current charges and offense history;

(4) Age;

(5) Any mental, physical, or developmental disability or illness;

(6) Level of emotional and cognitive development;

(7) Physical size and stature;

(8) The UC's own perception of vulnerability; and

(9) Any other specific information about an individual UC that may indicate heightened needs for supervision, additional safety precautions, or separation from certain other UCs.

(c) This information must be ascertained through conversations with the UC during the intake process and medical and mental health screenings; during classification assessments; and by reviewing court records, case files, care provider facility behavioral records, and other relevant documentation from the UC's files. Only trained staff are permitted to talk with UCs to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes of the assessment required under paragraph (a) of this section. Care provider facilities must provide UCs an opportunity to discuss any safety concerns or sensitive issues privately.

(d) The care provider facility must implement appropriate controls on the dissemination within the care provider facility of responses to questions asked pursuant to this standard in order to ensure that sensitive information is not exploited to the UC's detriment by staff or other UCs.

§ 411.42 Use of assessment information.

(a) The care provider facility must use the information from the risk assessment under § 411.41 to inform assignment of UCs to housing, education, recreation, and other activities and services. The care provider facility must make individualized determinations about how to ensure the safety and health of each UC.

(b) Care provider facilities may not place UCs on one-on-one supervision as a result of the assessment completed in § 411.41 unless there are exigent circumstances that require one-on-one supervision to keep the UC, other UCs, or staff safe, and then, only until an alternative means of keeping all residents and staff safe can be arranged. During any period of one-on-one supervision, a UC may not be denied any required services, including but not limited to daily large-muscle exercise, required educational programming, and social services, as reasonable under the circumstances. UCs on one-on-one supervision must receive daily visits from a medical practitioner or mental health care clinician as necessary unless the medical practitioner or mental health care clinician determines daily visits are not required. The medical practitioner or mental health care clinician, however, must continue to meet with the UC on a regular basis while the UC is on one-on-one supervision.

(c) When making assessment and housing assignments for a transgender or intersex UCs, the care provider facility must consider the UC's gender self-identification and an assessment of the effects of a housing assignment on the UC's health and safety. The care provider facility must consult a medical or mental health professional as soon as practicable on this assessment. The care provider facility must not base housing assignment decisions of transgender or intersex UCs solely on the identity documents or physical anatomy of the UC; a UC's self-identification of his/her gender and self-assessment of safety needs must always be taken into consideration as well. An identity document may include but is not limited to official U.S. and foreign government documentation, birth certificates, and other official documentation stating the UC's sex. The care provider facility's housing assignment of a transgender or intersex UCs must be consistent with the safety and security considerations of the care provider facility, State and local licensing standards, and housing and programming assignments of each transgender or intersex UCs must be regularly reassessed to review any threats to safety experienced by the UC.

Subpart F—Reporting

§ 411.51 UC reporting.

(a) The care provider facility must develop policies and procedures in accordance with § 411.15 to ensure that UCs have multiple ways to report to the care provider: Sexual abuse and sexual harassment, retaliation for reporting sexual abuse or sexual harassment, and staff neglect or violations of responsibilities that may have contributed to such incidents. The care provider facility also must provide access to and instructions on how UCs may contact their consular official, ORR's headquarters, and an outside entity to report these incidents. Care provider facilities must provide UCs access to telephones with free, preprogrammed numbers for ORR headquarters and the outside entity designated under § 411.51(b).

(b) The care provider facility must provide and inform the UC of at least one way for UCs to report sexual abuse and sexual harassment to an entity or office that is not part of the care provider facility and is able to receive and immediately forward UC reports of sexual abuse and sexual harassment to ORR officials, allowing UCs to remain anonymous upon request. The care provider facility must maintain or attempt to enter into a memorandum of understanding or other agreement with the entity or office and maintain copies of agreements or documentation showing attempts to enter into agreements.

(c) The care provider facility's policies and procedures must include provisions for staff to accept reports made verbally, in writing, anonymously, and from third parties. Staff must promptly document any verbal reports.

(d) All allegations or knowledge of sexual abuse and sexual harassment by staff or UCs must be immediately reported to the State or local licensing agency, the State or local Child Protective Services agency, State or local law enforcement, and to ORR according to ORR's policies and procedures.

§ 411.52 Grievances.

(a) The care provider facility must implement written policies and procedures for identifying and handling time-sensitive grievances that involve an immediate threat to UC health, safety, or welfare related to sexual abuse and sexual harassment. All such grievances must be reported to ORR according to ORR policies and procedures.

(b) The care provider facility's staff must bring medical emergencies to the immediate attention of proper medical and/or emergency services personnel for further assessment.

(c) The care provider facility must issue a written decision on the grievance within five days of receipt.

(d) To prepare a grievance, a UC may obtain assistance from another UC, care provider facility staff, family members, or legal representatives. Care provider facility staff must take reasonable steps to expedite requests for assistance from these other parties.

§ 411.53 UC access to outside confidential support services.

(a) Care provider facilities must utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, investigation, and the prosecution of sexual abuse perpetrators to most appropriately address a sexual abuse victim's needs. The care provider facility must maintain or attempt to enter into memoranda of understanding or other agreements with community service providers, or if local providers are not available, with national organizations that provide legal advocacy and confidential emotional support services for immigrant victims of crime. The care provider facility must maintain copies of its agreements or documentation showing attempts to enter into such agreements.

(b) Care provider facilities must have written policies and procedures to include outside agencies in the care provider facility's sexual abuse and sexual harassment prevention and intervention protocols, if such resources are available.

(c) Care provider facilities must make available to UC information about local organizations that can assist UCs who are victims of sexual abuse and sexual harassment, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If no such local organizations exist, the care provider facility must make available the same information about national organizations. The care provider facility must enable reasonable communication between UCs and these organizations and agencies in a confidential manner and inform UCs, prior to giving them access, of the extent to which such communications will be confidential.

§ 411.54 Third-party reporting.

ORR must establish a method to receive third-party reports of sexual abuse and sexual harassment and must make available to the public information on how to report sexual abuse and sexual harassment on behalf of a UC.

§ 411.55 UC access to attorneys or other legal representatives and families.

(a) Care provider facilities must provide UCs confidential access to their attorney or other legal representative in accordance with the care provider's attorney-client visitation rules. The care provider's visitation rules must include provisions for immediate access in the case of an emergency or exigent circumstance. The care provider's attorney-client visitation rules must be approved by ORR to ensure the rules are reasonable and appropriate and include provisions for emergencies and exigent circumstances.

(b) Care provider facilities must provide UCs access to their families, including legal guardians, unless ORR has documentation showing that certain family members or legal guardians should not be provided access because of safety concerns.

Subpart G—Official Response Following a UC Report

§ 411.61 Staff reporting duties.

(a) All care provider facility staff, volunteers, and contractors must immediately report to ORR according to ORR policies and procedures and to State or local agencies in accordance with mandatory reporting laws: any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred while a UC was in ORR care; retaliation against UCs or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation. ORR must review and approve the care provider facility's policies and procedures and ensure that the care provider facility specifies appropriate reporting procedures.

(b) Care provider facility staff members who become aware of alleged sexual abuse or sexual harassment must immediately follow reporting requirements set forth by ORR's and the care provider facility's policies and procedures.

(c) Apart from such reporting, care provider facility staff must not reveal any information related to a sexual abuse or sexual harassment report to anyone within the care provider facility except to the extent necessary for medical or mental health treatment, investigations, notice to law enforcement, or other security and management decisions.

(d) Care provider facility staff must report any sexual abuse and sexual harassment allegations to the designated State or local services agency under applicable mandatory reporting laws in addition to law enforcement and the State and local licensing agency.

(e) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, the care provider facility head or his or her designee must report the allegation to the alleged victim's parents or legal guardians, unless ORR has evidence showing the parents or legal guardians should not be notified or the victim does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

(f) Upon receiving an allegation of sexual abuse or sexual harassment that occurred while a UC was in ORR care, ORR will share this information with the UC's attorney of record within 48 hours of learning of the allegation unless the UC does not consent to this disclosure of information and is 14 years of age or older and ORR has determined the victim is able to make an independent decision.

§ 411.62 Protection duties.

If a care provider facility employee, volunteer, or contractor reasonably believes that a UC is subject to substantial risk of imminent sexual abuse or sexual harassment, he or she must take immediate action to protect the UC.

§ 411.63 Reporting to other care provider facilities and DHS.

(a) Upon receiving an allegation that a UC was sexually abused or sexually harassed while at another care provider facility, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving the allegation. ORR will then notify the care provider facility where the alleged abuse or harassment occurred.

(b) The care provider facility must document that it provided such notification to ORR.

(c) The care provider facility that receives such notification, to the extent that such care provider facility is covered by this part, must ensure that the allegation is referred for investigation in accordance with these standards.

(d) Upon receiving an allegation that a UC was sexually abused or sexually harassed while in DHS custody, the care provider facility whose staff received the allegation must immediately notify ORR, but no later than 24 hours after receiving an allegation. ORR will then report the allegation to DHS in accordance with DHS policies and procedures.

(e) The care provider facility must document that it provided such notification to ORR.

§ 411.64 Responder duties.

(a) Upon learning of an allegation that a UC was sexually abused while in an ORR care provider facility, the first care provider facility staff member to respond to the report must be required to:

(1) Separate the alleged victim, abuser, and any witnesses;

(2) Preserve and protect, to the greatest extent possible, any crime scene until the appropriate authorities can take steps to collect any evidence;

(3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brush teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and

(4) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged abuser(s) and/or witnesses, as necessary, do not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

§ 411.65 Coordinated response.

(a) Care provider facilities must develop a written institutional plan to coordinate actions taken by staff first responders, medical and mental health practitioners, outside investigators, victim advocates, and care provider facility leadership in response to an incident of sexual abuse to ensure that victims receive all necessary immediate and ongoing medical, mental health, and support services and that investigators are able to obtain usable evidence. ORR must approve the written institutional plan.

(b) Care provider facilities must use a coordinated, multidisciplinary team approach to responding to sexual abuse.

(c) If a victim of sexual abuse is transferred between ORR care provider facilities, ORR must, as permitted by law, inform the receiving care provider facility of the incident and the victim's potential need for medical or social services.

(d) If a victim of sexual abuse is transferred from an ORR care provider facility to a non-ORR facility or sponsor, ORR must, as permitted by law, inform the receiving facility or sponsor of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise.

§ 411.66 Protection of UCs from contact with alleged abusers.

ORR and care provider facility staff, contractors, and volunteers suspected of perpetrating sexual abuse or sexual harassment must be suspended from all duties that would involve or allow access to UCs pending the outcome of an investigation.

§ 411.67 Protection against retaliation.

Care provider facility staff, contractors, volunteers, and UCs must not retaliate against any person who reports, complains about, or participates in an investigation of alleged sexual abuse or sexual harassment. For the remainder of the UC's stay in ORR custody following a report of sexual abuse or sexual harassment, ORR and the care provider facility must monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff and must promptly remedy any such retaliation. ORR and the care provider facility must also monitor to see if there are facts that may suggest possible retaliation by UCs or care provider facility staff against any staff member, contractor, or volunteer and must promptly remedy any such retaliation. Items ORR and the care provider facility should monitor include but are not limited to any UC disciplinary reports, housing or program changes, negative performance reviews, or reassignments of staff. Care provider facilities must discuss any changes with the appropriate UC or staff member as part of their efforts to determine if retaliation is taking place and, when confirmed, immediately takes steps to protect the UC or staff member.

§ 411.68 Post-allegation protection.

(a) Care provider facilities must ensure that UC victims of sexual abuse and sexual harassment are assigned to a supportive environment that represents the least restrictive housing option possible to keep the UC safe and secure, subject to the requirements of § 411.42.

(b) The care provider facility should employ multiple protection measures to ensure the safety and security of UC victims of sexual abuse and sexual harassment, including but not limited to: Housing changes or transfers for UC victims and/or abusers or harassers; removal of alleged UC abusers or harassers from contact with victims; and emotional support services for UCs or staff who fear retaliation for reporting sexual abuse or sexual harassment or cooperating with investigations.

(c) A UC victim may be placed on one-on-one supervision in order to protect the UC in exigent circumstances. Before taking the UC off of one-on-one supervision, the care provider facility must complete a re-assessment taking into consideration any increased vulnerability of the UC as a result of the sexual abuse or sexual harassment. The re-assessment must be completed as soon as possible and without delay so that the UC is not on one-on-one supervision longer than is absolutely necessary for safety and security reasons.

Subpart H—ORR Incident Monitoring and Evaluation

§ 411.71 ORR monitoring and evaluation of care provider facilities following an allegation of sexual abuse or sexual harassment.

(a) Upon receiving an allegation of sexual abuse or sexual harassment that occurs at an ORR care provider facility, ORR will monitor and evaluate the care provider facility to ensure that the care provider facility complied with the requirements of this section or ORR policies and procedures. Upon conclusion of an outside investigation, ORR must review any available completed investigation reports to determine whether additional monitoring and evaluation activities are required.

(b) ORR must develop written policies and procedures for incident monitoring and evaluation of sexual abuse and sexual harassment allegations, including provision requiring:

(1) Reviewing prior complaints and reports of sexual abuse and sexual harassment involving the suspected perpetrator;

(2) Determining whether actions or failures to act at the care provider facility contributed to the abuse or harassment;

(3) Determining if any ORR policies and procedures or relevant legal authorities were broken; and

(4) Retention of such reports for as long as the alleged abuser or harasser is in ORR custody or employed by ORR or the care provider facility, plus ten years.

(c) ORR must ensure that its incident monitoring and evaluation does not interfere with any ongoing investigation conducted by State or local Child Protective Services, the State or local licensing agency, or law enforcement.

(d) When outside agencies investigate an allegation of sexual abuse or sexual harassment, the care provider facility and ORR must cooperate with outside investigators.

§ 411.72 Reporting to UCs.

Following an investigation by the appropriate investigating authority into a UC's allegation of sexual abuse or sexual harassment, ORR must notify the UC in his/her preferred language of the result of the investigation if the UC is still in ORR care and custody and where feasible. If a UC has been released from ORR care when an investigation is completed, ORR should attempt to notify the UC. ORR may encourage the investigating agency to also notify other complainants or additional parties notified of the allegation of the result of the investigation.

Subpart I—Interventions and Discipline

§ 411.81 Disciplinary sanctions for staff.

(a) Care provider facilities must take disciplinary action up to and including termination against care provider facility staff with a substantiated allegation of sexual abuse or sexual harassment against them or for violating ORR or the care provider facility's sexual abuse and sexual harassment policies and procedures.

(b) Termination must be the presumptive disciplinary sanction for staff who engaged in sexual abuse or sexual harassment.

(c) All terminations for violations of ORR and/or care provider facility sexual abuse and sexual harassment policies and procedures or resignations by staff, who would have been terminated if not for their resignation, must be reported to law enforcement agencies and to any relevant State or local licensing bodies.

(d) Any staff member with a substantiated allegation of sexual abuse or sexual harassment against him/her at an ORR care provider facility is barred from employment at any ORR care provider facility.

§ 411.82 Corrective actions for contractors and volunteers.

(a) Any contractor or volunteer with a substantiated allegation of sexual abuse or sexual harassment against him/her must be prohibited from working or volunteering at the care provider facility and at any ORR care provider facility.

(b) The care provider facility must take appropriate remedial measures and must consider whether to prohibit further contact with UCs by contractors or volunteers who have not engaged in sexual abuse or sexual harassment but violated other provisions within these standards, ORR sexual abuse and sexual harassment policies and procedures, or the care provider's sexual abuse and sexual harassment policies and procedures.

§ 411.83 Interventions for UCs who engage in sexual abuse.

UCs must receive appropriate interventions if they engage in UC-on-UC sexual abuse. Decisions regarding which types of interventions to use in particular cases, including treatment, counseling, or educational programs, are made with the goal of promoting improved behavior by the UC and ensuring the safety of other UCs and staff. Intervention decisions should take into account the social, sexual, emotional, and cognitive development of the UC and the UC's mental health status. Incidents of UC-on-UC abuse are referred to all investigating authorities, including law enforcement entities.

Subpart J—Medical and Mental Health Care

§ 411.91 Medical and mental health assessments; history of sexual abuse.

(a) If the assessment pursuant to § 411.41 indicates that a UC experienced prior sexual victimization or perpetrated sexual abuse, the care provider facility must ensure that the UC is immediately referred to a qualified medical or mental health practitioner for medical and/or mental health follow-up as appropriate. Care provider facility staff must also ensure that all UCs disclosures are reported in accordance with these standards.

(b) When a referral for medical follow-up is initiated, the care provider facility must ensure that the UC receives a health evaluation no later than seventy-two (72) hours after the referral.

(c) When a referral for mental health follow-up is initiated, the care provider facility must ensure that the UC receives a mental health evaluation no later than seventy-two (72) hours after the referral.

§ 411.92 Access to emergency medical and mental health services.

(a) Care provider facilities must provide UC victims of sexual abuse timely, unimpeded access to emergency medical treatment, crisis intervention services, emergency contraception, and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care, where appropriate under medical or mental health professional standards.

(b) Care provider facilities must provide UC victims of sexual abuse access to all medical treatment and crisis intervention services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

§ 411.93 Ongoing medical and mental health care for sexual abuse and sexual harassment victims and abusers.

(a) Care provider facilities must offer ongoing medical and mental health evaluations and treatment to all UCs who are victimized by sexual abuse or sexual harassment while in ORR care and custody.

(b) The evaluation and treatment of such victims must include, as appropriate, follow-up services, treatment plans, and, when necessary, referrals for continued care following their transfer to or placement in other care provider facilities or their release from ORR care and custody.

(c) The care provider facility must provide victims with medical and mental health services consistent with the community level of care.

(d) Care provider facilities must ensure that female UC victims of sexual abuse by a male abuser while in ORR care and custody are offered pregnancy tests, as necessary. If pregnancy results from an instance of sexual abuse, care provider facility must ensure that the victim receives timely and comprehensive information about all lawful pregnancy-related medical services and timely access to all lawful pregnancy-related medical services. In order for UCs to make informed decisions regarding medical services, including, as appropriate, medical services provided under § 411.92, care provider facilities should engage the UC in discussions with family members or attorneys of record in accordance with § 411.55 to the extent practicable and follow appropriate State laws regarding the age of consent for medical procedures.

(e) Care provider facilities must ensure that UC victims of sexual abuse that occurred while in ORR care and custody are offered tests for sexually transmitted infections as medically appropriate.

(f) Care provider facilities must ensure that UC victims are provided access to treatment services regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident.

(g) The care provider facility must attempt to conduct a mental health evaluation of all known UC-on-UC abusers within seventy-two (72) hours of learning of such abuse and/or abuse history and offer treatment when deemed appropriate by mental health practitioners.

Subpart K—Data Collection and Review

§ 411.101 Sexual abuse and sexual harassment incident reviews.

(a) Care provider facilities must conduct sexual abuse or sexual harassment incident reviews at the conclusion of every investigation of sexual abuse or sexual harassment and, where the allegation was either substantiated or unable to be substantiated but not determined to be unfounded, prepare a written report recommending whether the incident review and/or investigation indicates that a change in policy or practice could better prevent, detect, or respond to sexual abuse and sexual harassment. The care provider facility must implement the recommendations for improvement or must document its reason for not doing so in a written response. Both the report and response must be forwarded to ORR's Prevention of Sexual Abuse Coordinator. Care provider facilities also must collect accurate, uniform data for every reported incident of sexual abuse and sexual harassment using a standardized instrument and set of definitions.

(b) Care provider facilities must conduct an annual review of all sexual abuse and sexual harassment investigations and resulting incident reviews to assess and improve sexual abuse and sexual harassment detection, prevention, and response efforts. The results and findings of the annual review must be provided to ORR's Prevention of Sexual Abuse Coordinator.

§ 411.102 Data collection.

(a) Care provider facilities must maintain all case records associated with claims of sexual abuse and sexual harassment, including incident reports, investigative reports, offender information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling in accordance with these standards and applicable Federal and State laws and ORR policies and procedures.

(b) On an ongoing basis, the PSA Compliance Manager must work with care provider facility management and ORR to share data regarding effective care provider facility response methods to sexual abuse and sexual harassment.

(c) On a quarterly basis, the PSA Compliance Manager must prepare a report for ORR compiling information received about all incidents and allegations of sexual abuse and sexual harassment of UCs in the care provider facility during the period covered by the report as well as ongoing investigations and other pending cases.

(d) On an annual basis, the PSA Compliance Manager must aggregate incident-based sexual abuse and sexual harassment data, including the number of reported sexual abuse and sexual harassment allegations determined to be substantiated, unsubstantiated, unfounded, or for which an investigation is ongoing. For each incident, information concerning the following also must be included:

(1) The date, time, location, and nature of the incident;

(2) The demographic background of the victim and perpetrator (including citizenship, nationality, age, and sex) that excludes specific identifying information;

(3) The reporting timeline for the incident (including the name of the individual who reported the incident; the date and time the report was received by the care provider facility; and the date and time the incident was reported to ORR);

(4) Any injuries sustained by the victim;

(5) Post-report follow-up responses and action taken by the care provider facility (*e.g.,* housing placement changes, medical examinations, mental health counseling);

(6) Any interventions imposed on the perpetrator.

(e) Care provider facilities must provide all data described in this section from the previous calendar year to ORR no later than August 31.

§ 411.103 Data review for corrective action.

(a) ORR must review data collected and aggregated pursuant to §§ 411.101 and 411.102 in order to assess and improve the effectiveness of its sexual abuse and sexual harassment prevention, detection, and response policies, procedures, practices, and training, including:

(1) Identifying problem areas;

(2) Taking corrective actions on an ongoing basis; and

(3) Preparing an annual report of its findings and corrective actions for each care provider facility as well as ORR as a whole.

(b) Such report must include a comparison of the current year's data and corrective actions with those from prior years and must provide an assessment of ORR's progress in preventing, detecting, and responding to sexual abuse and sexual harassment.

(c) The Director of ORR must approve ORR's annual report on ORR's UC Program as a whole and make the report available to the public through its Web site or otherwise make the report readily available to the public.

(d) ORR may redact specific material from the reports when necessary for safety and security reasons but must indicate the nature of the material redacted.

§ 411.104 Data storage, publication, and destruction.

(a) ORR must ensure that data collected pursuant to §§ 411.101 and 411.102 is securely retained in accordance with Federal and State laws and ORR record retention policies and procedures.

(b) ORR must make all aggregated sexual abuse and sexual harassment data from ORR care provider facilities with which it provides a grant to or contracts with, excluding secure care providers and traditional foster care providers, available to the public at least annually on its Web site consistent with existing ORR information disclosure policies and procedures.

(c) Before making any aggregated sexual abuse and sexual harassment data publicly available, ORR must remove all personally identifiable information.

(d) ORR must maintain sexual abuse and sexual harassment data for at least 10 years after the date of its initial collection unless Federal, State, or local law requires for the disposal of official information in less than 10 years.

Subpart L—Audits and Corrective Action

§ 411.111 Frequency and scope of audits.

(a) Within three years of February 22, 2016, each care provider facility that houses UCs will be audited at least once; and during each three-year period thereafter.

(b) ORR may expedite an audit if it believes that a particular care provider facility may be experiencing problems related to sexual abuse or sexual harassment.

(c) ORR must develop and issue an instrument that is coordinated with the HHS Office of the Inspector General that will provide guidance on the conduct and contents of the audit.

(d) The auditor must review all relevant ORR-wide policies, procedures, reports, internal and external audits, and licensing requirements for each care provider facility type.

(e) The audits must review, at a minimum, a sampling of relevant documents and other records and other information for the most recent one-year period.

(f) The auditor must have access to, and must observe, all areas of the audited care provider facilities.

(g) ORR and the care provider facility must provide the auditor with the relevant documentation to complete a thorough audit of the care provider facility.

(h) The auditor must retain and preserve all documentation (including, *e.g.,* videotapes and interview notes) relied upon in making audit determinations. Such documentation must be provided to ORR upon request.

(i) The auditor must interview a representative sample of UCs and staff, and the care provider facility must make space available suitable for such interviews.

(j) The auditor must review a sampling of any available video footage and other electronically available data that may be relevant to the provisions being audited.

(k) The auditor must be permitted to conduct private interviews with UCs.

(l) UCs must be permitted to send confidential information or correspondence to the auditor.

(m) Auditors must attempt to solicit input from community-based or victim advocates who may have insight into relevant conditions in the care provider facility.

(n) All sensitive and confidential information provided to auditors will include appropriate designations and limitations on further dissemination. Auditors must follow appropriate procedures for handling and safeguarding such information.

(o) Care provider facilities bear the affirmative burden on demonstrating compliance with the standards to the auditor.

§ 411.112 Auditor qualifications.

(a) An audit must be conducted by an entity or individual with relevant auditing or evaluation experience and is external to ORR.

(b) All auditors must be certified by ORR, and ORR must develop and issue procedures regarding the certification process within six months of December 24, 2014, which must include training requirements.

(c) No audit may be conducted by an auditor who received financial compensation from the care provider, the care provider's agency, or ORR (except for compensation received for conducting other audits) within the three years prior to ORR's retention of the auditor.

(d) ORR, the care provider, or the care provider's agency must not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to ORR's retention of the auditor, with the exception of contracting for subsequent audits.

§ 411.113 Audit contents and findings.

(a) Each audit must include a certification by the auditor that no conflict of interest exists with respect to his or her ability to conduct an audit of the care provider facility under review.

(b) Audit reports must state whether care provider facility policies and procedures comply with all standards.

(c) For each of these standards, the auditor must determine whether the audited care provider facility reaches one of the following findings: Exceeds Standard (substantially exceeds requirement of standard); Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period); Does Not Meet Standard (requires corrective action). The audit summary must indicate, among other things, the number of provisions the care provider facility achieved at each grade level.

(d) Audit reports must describe the methodology, sampling sizes, and basis for the auditor's conclusions with regard to each standard provision for each audited care provider facility and must include recommendations for any required correction action.

(e) Auditors must redact any personally identifiable information of UCs or staff information from their reports but must provide such information to ORR upon request.

(f) ORR must ensure that aggregated data on final audit reports is published on ORR's Web site, or is otherwise made readily available to the public. ORR must redact any sensitive or confidential information prior to providing such reports publicly.

§ 411.114 Audit corrective action plan.

(a) A finding of ''Does Not Meet Standard'' with one or more standards must trigger a 90-day corrective action period.

(b) The auditor and ORR must jointly develop a corrective action plan to achieve compliance.

(c) The auditor must take necessary and appropriate steps to verify implementation of the corrective action plan, such as reviewing updated policies and procedures or re-inspecting portions of a care provider facility.

(d) After the 180-day corrective action period ends, the auditor must issue a final determination as to whether the care provider facility achieved compliance with those standards requiring corrective action.

(e) If the care provider facility does not achieve compliance with each standard, it may (at its discretion and cost) request a subsequent audit once it believes that it achieved compliance.

§ 411.115 Audit appeals.

(a) A care provider facility may file an appeal with ORR regarding any specific audit finding that it believes to be incorrect. Such appeal must be filed within 90 days of the auditor's final determination.

(b) If ORR determines that the care provider facility stated good cause for re-evaluation, the care provider facility may commission a re-audit by an auditor mutually agreed upon by ORR and the care provider facility. The care provider facility must bear the costs of the re-audit.

(c) The findings of the re-audit are considered final.

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Part IV

Council on Environmental Quality

Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews; Notice

COUNCIL ON ENVIRONMENTAL QUALITY

Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews

AGENCY: Council on Environmental Quality.

ACTION: Notice of availability, request for public comments on revised draft guidance for Federal Departments and Agencies on consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA reviews.

SUMMARY: The Council on Environmental Quality (CEQ) is publishing revised draft guidance on how National Environmental Policy Act (NEPA) analysis and documentation should address greenhouse gas (GHG) emissions and the impacts of climate change. Many projects and programs proposed by, or requiring the approval of, the Federal Government have the potential to emit or sequester GHG, and may be potentially affected by climate changes. It follows, under NEPA, that Federal decisionmakers and the public should be informed about the proposal's GHG emissions and climate change impacts. Such information can help a decisionmaker make an informed choice between alternative actions that will result in different levels of GHG emissions, or consider mitigation measures to reduce the impacts of climate change.

This revised draft guidance supersedes the draft guidance CEQ issued on February 18, 2010, entitled ''Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions.'' [1] The February 2010 draft guidance specifically did not apply to land and resource management activities. That distinction is no longer retained, and this revised draft guidance applies to all proposed Federal agency actions subject to NEPA.

This revised draft guidance: (1) Discusses direct, indirect, and cumulative impacts analysis of a proposed action's reasonably foreseeable emissions and effects; (2) highlights the consideration of reasonable alternatives and points to the need to consider the short-term and long-term effects and benefits in the alternatives analysis and mitigation to lower emissions; (3) recommends that agencies use a reference point to determine when GHG emissions warrant a quantitative analysis taking into account available GHG quantification tools and data that are appropriate for proposed agency actions; (4) recommends that an agency select the appropriate level of action for NEPA review at which to assess the effects of GHG emissions and climate change, either at a broad programmatic or landscape-scale level or at a project- or site-specific level, and that the agency set forth a reasoned explanation for its approach; (5) counsels agencies to use the information developed during the NEPA review to consider alternatives that are more resilient to the effects of a changing climate; and (6) advises agencies to use existing information and tools when assessing future proposed action, and provides examples of some existing sources of scientific information.

DATES: Comments should be submitted on or before February 23, 2015.

ADDRESSES: The NEPA Draft Guidance documents are available at *http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa.* Comments on the ''Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews'' should be submitted electronically to *GCC.guidance@ceq.eop.gov,* or in writing to the Council on Environmental Quality, ATTN: Horst Greczmiel, 722 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Horst Greczmiel, Associate Director for National Environmental Policy Act Oversight, at (202) 395–5750.

SUPPLEMENTARY INFORMATION: Enacted by Congress in 1969, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4370, is a fundamental tool used to harmonize our environmental, economic, and social aspirations and is a cornerstone of our Nation's efforts to protect the environment. NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before deciding to adopt proposals and take action.[2] On February 18, 2010, CEQ announced the issuance of three proposed draft guidance documents to modernize and reinvigorate NEPA, in conjunction with the 40th anniversary of the statute's signing into law.[3]

One of those three draft guidance documents, entitled ''Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions'' (hereinafter ''2010 draft guidance''), described how agencies should analyze GHG emissions and climate change impacts in NEPA reviews prepared for agency actions.[4] CEQ did not propose to make the 2010 draft guidance applicable to Federal land and resource management actions. CEQ was not aware of any established Federal protocols for assessing land management techniques, including changes in land use or land management strategies, and their effect on atmospheric carbon release and sequestration at a landscape scale. Consequently, the 2010 draft guidance invited public comment on how NEPA reviews for proposed land and resource management actions should take GHG emissions and climate change into account. CEQ specifically requested public comment on seven questions, listed in section VI of the 2010 draft guidance, regarding the applicability of the guidance to land and resource management actions.

CEQ appreciates the thoughtful responses to its request for comments on the 2010 draft guidance. CEQ received more than 100 sets of comments. Commenters included private citizens, corporations, environmental organizations, trade associations, and Federal and state agencies. Those comments that raised policy or substantive concerns have been grouped thematically, summarized, and addressed in this notice.[5]

After considering the public's responses to the questions set out generally on page 4 and in section VI of the 2010 draft guidance, comments on the 2010 draft guidance itself, and after further consultation with Federal

[1] A Notice of Availability for the 2010 draft guidance was published in the **Federal Register.** *See* 75 FR 8046 (Feb. 23, 2010).

[2] For more information on the applicability of NEPA, *see* the Council on Environmental Quality (CEQ), ''A Citizen's Guide to the NEPA,'' *available at https://ceq.doe.gov/nepa/Citizens_Guide_Dec07.pdf.*

[3] Two of these guidance documents have since been finalized. *See* CEQ, ''Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,'' (Nov. 23, 2010), *available at https://ceq.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf; see also* CEQ, ''Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,'' (Jan. 14, 2011), *available at https://ceq.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.*

[4] CEQ, ''Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions,'' (Feb. 18, 2010), *available at www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance.*

[5] All of the public comments can be viewed online at www.*whitehouse.gov/administration/eop/ceq/initiatives/nepa/comments.*

agencies, CEQ proposes this revised draft guidance applicable to all NEPA reviews regardless of action or resource. The revised draft guidance is provided below, after the comment summary and response. The first set of comments and responses is the Summary of Responses to Questions Asked in the 2010 Draft Guidance. These refer to the CEQ request for public comment on how NEPA reviews of proposed land and resource management actions should consider GHG emissions and impacts of climate change. The second set of responses to comments, the Summary of Comments on the 2010 Draft Guidance, are summarized thematically by the topic to which they pertain.

I. Summary of Responses to Questions Asked in the 2010 Draft Guidance on Whether CEQ Should Issue Guidance on the Consideration of GHG Emissions From, and Climate Change Effects on, Land and Resource Management Actions

Many commenters made a general observation that NEPA already requires agency consideration of GHG emissions and impacts of climate change, by mandating that agencies take a hard look at all reasonably foreseeable impacts of major Federal actions at the earliest practicable time as well as provide information about the affected environment, regardless of the existence of established protocols for doing so. Commenters also stated that this requirement is not subject to agency discretion, but is often referred to as the ''rule of reason.''

Commenters had different views about whether the available science supports NEPA guidance applicable to land and resource management actions. Some believe that analysis of the climate effects of land and resource management actions would likely be judged arbitrary and capricious, because it is not currently possible to determine those effects. In the forestry context, for example, those commenters were concerned that the carbon benefits from sequestration, as well as potential indirect GHG emissions, and cumulative impacts, would be difficult to calculate with any certainty with respect to any particular action or set of actions. Other commenters cited the ''rule of reason'' by which agencies determine whether to prepare an environmental impact statement (EIS) based on the usefulness of potential new information in the decision-making process and noted that the 2010 draft guidance properly directs agencies to acknowledge the scientific limits of their ability to predict climate change effects and avoid analyzing speculative effects.

Other commenters urged CEQ to apply the guidance to Federal land and resource management actions, due to the urgency of the climate change threat and the possibility that confusion and litigation could result if agencies independently adopt different approaches to NEPA analysis of climate impacts for different types of Federal actions. Additionally, some commenters found it important for agencies not only to consider alternatives, including the no action alternative, to reduce GHG emissions, but also to consider the benefits of retaining terrestrial ecosystems to sequester and store atmospheric carbon to stem the tide of global climate change. Analysis of direct and indirect emissions from proposed Federal forest management actions, they believe, will require Federal decisionmakers to consider carbon emissions and sequestration and promote accountability for the Federal role in the loss of domestic forestland.

Response to Comments:

CEQ is issuing this revised draft guidance applicable to all proposed Federal agency actions, including land and resource management actions, for several reasons. CEQ was asked to provide guidance on this subject informally by Federal agencies and formally by a petition under the Administrative Procedure Act to consider regulations and guidance on analyzing GHG emissions and the impacts of climate change under NEPA.[6] CEQ's consideration of the effects of GHG emissions and impacts of climate change dates back to CEQ's first Annual Report in 1970, which concluded that ''[m]an may be changing his weather.'' [7] By issuing guidance applicable to all Federal agencies, CEQ aims to ensure consistency and certainty about whether and how agencies should address GHG emissions and impacts of climate change in their NEPA analyses and documents. The revised draft guidance affirms that NEPA and the CEQ Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR parts 1500–1508 (hereinafter ''CEQ Regulations''), establish a process which accounts for uncertainty and requires agencies to address the relevance of, and ability to obtain, incomplete and unavailable information.[8] It also highlights the existence of widely-available tools and methodologies that can be used to calculate estimates of GHG emissions and carbon storage.

The revised draft guidance emphasizes that the NEPA analysis and documentation should present a reasonably thorough discussion of probable environmental consequences.[9] Similarly, this revised guidance affirms that agencies should take into account both short- and long-term effects and benefits of their actions over their entire duration. We welcome the public's further comments on this issue.

1. How should NEPA documents regarding long-range energy and resource management programs assess GHG emissions and climate change impacts?

Several commenters pointed to programmatic environmental impact statements on long-range energy and resource management programs as providing the best level for analysis, and which could be relied upon in subsequent, tiered analyses of specific proposed actions if necessary. Commenters maintained that such an approach would address long-range energy and resource management program or planning activities guided by the terms and mandates of land and resource management statutes, such as the Federal Land Policy and Management Act. It would also enable agencies to take both short- and long-term impacts of actions or sets of actions into account. These commenters generally touted this approach as offering an effective framework for identifying and implementing policy choices that would improve the process as well as the outcomes. Finally, some commenters, focusing on projects or activities involving energy production and use, recommended the guidance clarify that combustion of extracted fuel sources should be evaluated, and others recommended evaluating a life-cycle analysis that considered the entire fuel chain. Others stated that such an analysis would include actions too far

[6] ''Recommendations of the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience,'' November 2014, at page 20 (recommendation 2.7) *available at www.whitehouse.gov/sites/default/files/docs/task_force_report_0.pdf; see* GAO report: ''Future Federal Adaptation Efforts Could Better Support Local Infrastructure Decision Makers,'' (Apr. 12, 2012), *available at gao.gov/products/GAO-13-242;* see also International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club, ''Petition Requesting That the Council on Environmental Quality Amend its Regulations to Clarify That Climate Change Analyses be Included in Environmental Review Documents,'' (Feb. 28, 2008) (the petition requested CEQ issue guidance and the petition to amend the regulations was denied on August 7, 2014).

[7] Council on Environmental Quality, ''Environmental Quality: The First Annual Report,'' at 93.

[8] *See* 40 CFR 1502.22.

[9] Agencies apply the ''rule of reason'' to ensure that their discussions pertain to the issues that deserve study and deemphasize issues that are less useful to the decisions regarding the proposal, its alternatives, and mitigation options. *See* 40 CFR 1500.4(f), 1500.4(g), 1501.7 and 1508.25.

removed from the agencies' statutory obligations to be meaningful for decisionmakers.

Commenters generally recommended that CEQ guidance ensure some level of consistency in assessing GHGs and climate change for land and resource management actions, and allow for the consideration of tradeoffs between long- and short-term impacts and benefits. Several commenters proposed that long-term forest and grassland health and habitat should be considered when assessing short-term emissions from proposed land and resource management actions.[10] The use of prescribed burns is an example of where balancing long- and short-term impacts and benefits are useful to the decisionmaker and the public (for example, while short-term emissions will result, there is the potential for long-term benefits for ecosystem health). Several commenters expressed the view that agencies taking land and resource management actions need to be afforded sufficient flexibility and discretion to develop specific protocols that build on existing procedures and experience.

Response to Comments:

The revised draft guidance makes it clear that agencies should apply their best judgment and expertise when determining how to consider the level of GHG emissions and impacts of climate change at the programmatic and project- or site-specific level of NEPA analysis and documentation. The revised draft guidance also provides for agencies to use their discretion to determine the appropriate comparison and balancing of long- and short-term emissions and impacts of climate change with other long- and short-term resource impacts and benefits. The guidance acknowledges that there are many established tools and methods for GHG calculation and provides several examples. The revised draft guidance calls upon agencies to exercise their expert judgment and provide the basis for determining whether and how to analyze GHG emissions. We welcome the public's further comments on this issue.

2. What should be included in specific NEPA guidance for projects applicable to the Federal land management agencies? and

3. What should be included in specific NEPA guidance for land management planning applicable to the Federal land management agencies?

Several commenters expressed the concern that without CEQ guidance, agencies would overlook or fail to analyze GHG emissions and climate change impacts. Focusing on land and resource management actions, many comments referred to both broad, programmatic land and resource management actions and to more focused, project-level land and resource management actions. Consequently, comments on Questions 2 and 3 are presented together, followed by a response.

Several commenters expressed concerns that NEPA analysis of climate-related impacts for site-specific projects was much more difficult than analysis at the programmatic level because of the lack of scientific study and modeling at smaller scales and the difficulty in establishing a foreseeable causal link between emissions associated with agency proposed actions and localized climate impacts. Several other commenters noted that scientific study of climate change is increasingly focused on regional and localized impacts on the environment and human populations, and this scientific study will continue to expand our knowledge of regional and localized impacts.

Some commenters went on to remind CEQ that precise quantification is not necessary when analyzing GHG emissions and climate change impacts. Most commenters on this issue maintained that CEQ should stress the basic requirements and principles of the NEPA process and guide Federal agencies to identify and consider credible climate information as it becomes available. An interagency effort to establish a clearinghouse for climate change information and modeling was proposed by several commenters who noted that such a clearinghouse would help avoid duplicative efforts and ensure a more robust coverage of issues.

Several commenters pointed to the Interagency Climate Change Adaptation Task Force and noted that the Task Force was studying models to predict changes in large-scale vegetation and population patterns that should be used when assessing the long-term environmental effects of climate change at a landscape or resource level. One of the most commonly-cited recommendations for broad scale programmatic analyses, as well as project specific analyses, was to support decision-making that would protect landscape linkages that allow species to migrate or disperse to a more favorable habitat as climate conditions change.

For analyses that consider a particular use or treatment of Federal lands that is repeated over a large area, commenters maintained that the guidance should set the temporal and spatial boundaries for analysis based on projected cumulative impacts. Additionally, commenters noted that agencies conducting analysis of permitted activities that contribute to climate change, where these activities are considered as ongoing management practices, should consider the cessation of the permitted activity as a reasonable alternative.

A few commenters made specific recommendations for agencies that have multiple use mandates. For example, they asked that the guidance include a summary of options or tools for measuring the relationships between land and water systems and climate change, and for considering each individual use relative to other multiple uses (including fossil fuel extraction, electric generation, and transmission). Some commenters argued that CEQ should direct Federal agencies to use cooperative and incentive-based programs to address climate change because Federal lands should not be managed primarily to offset unsustainable practices elsewhere. Finally, several commenters focused on forest management and urged CEQ to direct Federal agencies to conduct life-cycle analyses of the effects of timber management practices on forest carbon pools so that the reasonably foreseeable effects of management actions on sources and sinks of GHG could be considered in conjunction with natural disturbance regimes, efforts to maintain existing stores of carbon in mature and old growth forests (*e.g.,* ''carbon banks''), or re-growing plantations and other intensively managed forests to earlier conditions.

Some commenters suggested applying general NEPA principles and practices to land and resource management analyses. Their suggestions included: Considering alternatives to mitigate emissions and climate change impacts; using the best available science and credible methodologies; and disclosing the methods and assumptions underlying the analysis. Other commenters provided practical advice (such as advocating the use of graphics in NEPA documents) while some focused on calling for specific types of analyses such as life-cycle and economic assessment of the

[10] This is important in avoiding unintended consequences of management actions. *See* ''Global Climate Change Impacts in the United States,'' Karl, Thomas R., Melillo, Jerry M., Peterson, Thomas C. (eds.) at 156, Cambridge University Press (2009).

consequences of GHG emissions and global climate change. Further, commenters cited the CEQ Regulations as providing a method to address incomplete or unavailable information. Similarly, it was noted that agencies engaged in land use and resource planning should consider how the cumulative effects of implementing the proposed plan alternatives will or will not adapt to, exacerbate, or mitigate the effects of climate change on the affected planning area.

Some commenters favored using programmatic analyses for land and resource management actions for various reasons. Some urged that programmatic analyses for land and resource management actions that are repeated across a region can best assess the cumulative impacts on a broad, landscape scale. One commenter asserted that many Federal land and resource management activities are repeated with little variation across millions of acres of Federal land. Some commenters favored programmatic analyses to address climate change mitigation and consideration of alternative technologies and methods at the program level, while others called for Federal land management agencies to develop programmatic NEPA analyses that include full life-cycle modeling to evaluate the carbon released or stored by various types of land and resource management activities.

Response to Comments:

The revised draft guidance sets out the broad principles to assist agencies when they make determinations on how to conduct NEPA analyses with respect to the effects of GHGs and climate change and calls upon the agencies to provide reasoned analyses and an explanation of the determinations being made. The guidance recognizes the current limits of knowledge and science and calls upon agencies to consider future advancements tailored to the types of actions they undertake.

When using tiered analyses, agencies should consider whether and how the issues of GHG emissions and climate change effects should be addressed in NEPA analyses and documentation prepared at either or both the programmatic and project- or site-specific level of decision-making. It is the agency's responsibility to: Determine the level and detail of analysis that is appropriate to the decision at hand; to set the temporal and spatial boundaries for the analysis of GHG emissions, carbon sequestration, and climate change; and to determine the appropriate level of discussion to accompany that information. The information should be presented in a way that is useful to the public and decisionmakers. Agencies should also use their expertise and professional judgment to determine the appropriate comparison and balancing of long- and short-term emissions and impacts of climate change with other long- and short-term resource impacts and benefits, and to ensure that this is done when dealing with multiple uses.

In response to the comments received on the appropriate range of alternatives, the revised draft guidance incorporates the NEPA principle that agencies should consider a reasonable range of alternatives consistent with the purpose and need for the proposal, and, if such information would be useful to advance a reasoned choice, a comparison of alternatives and potential mitigation that addresses GHG emissions, carbon sequestration, and the impacts of climate change. This does not dictate that the decisionmaker must select the alternative with the lowest net level of GHG emissions, but simply allows for the careful consideration of GHG emissions, among all the factors being considered by the decisionmaker.

In response to commenters supporting the use of life-cycle analyses for GHG emissions, CEQ recommends that agencies rely on basic NEPA principles and consider all reasonably foreseeable effects that may result from their proposed actions using reasonable temporal and spatial parameters in their NEPA analyses rather than engaging in analyses that focus on speculative downstream emissions. We welcome the public's further comments on the issue of life-cycle analyses.

4. Should CEQ recommend any particular protocols for assessing land management practices and their effect on carbon release and sequestration?

Many commenters did not support the identification of specific protocols by CEQ. Some commenters recommended against naming specific protocols so as not to discourage Federal agencies from using other, better-suited protocols or from adopting new protocols based on scientific advancements. Other commenters stated that no specific protocol could be recommended because of the inadequacy of existing science. Instead of focusing on consideration of a possible CEQ specification of particular protocols, commenters generally discussed either the existence of current protocols to support the issuance of this guidance or the absence of existing protocols to explain why no guidance should be issued.

In support of the issuance of this guidance, in general, many commenters cited existing protocols. These commenters provided ways to account for the consideration of carbon emissions and sequestration from land and resource management actions, including: (1) Existing forest inventory data; (2) work being done pursuant to the U.S. Department of Energy's 1605(b) guidelines [11]; and (3) carbon sequestration accounting protocols. Also, commenters referenced the Climate Action Reserve's standardized measurement protocols. Commenters noted that well-developed scientific tools, including error estimates, confidence intervals, and sensitivity analyses, are already available for incorporation of uncertainty into decision processes. While citing existing protocols to support the ability of agencies to analyze land and resource management actions and their effects on carbon release and sequestration, most commenters did not support the idea of CEQ selecting specific protocols.

Some commenters noted that, to the extent there may remain scientific uncertainty with protocols, NEPA already provides for how such uncertainty should be analyzed pursuant to 40 CFR 1502.22. According to these commenters, the existence of incomplete and unavailable information does not alter the NEPA requirement to consider scientific information or set forth the circumstances surrounding the unavailable information. Other commenters maintained there is a lack of an established Federal protocol for assessing the impacts of land and resource management actions on atmospheric carbon release and sequestration at a landscape level, and, therefore, no protocol should be recommended. Commenters raised concerns that current protocols were unreliable because they were only in the developmental stages. If, however, CEQ were to apply a specific protocol, commenters raised specific concerns that must be addressed. There would need to be more Federal research, analysis at the programmatic level of carbon sinks, consideration of land use changes, the establishment of appropriate temporal limitations, and consideration of biogenic carbon cycles.

Response to Comments:

CEQ reviewed all the comments and also met with agencies at various sites around the country regarding the establishment of scientific protocols. The meetings with agencies and other stakeholders provided valuable insight

[11] Energy Policy Act of 1992, Pub. L. 102–486, 106 Stat. 2776.

on existing protocols and those being implemented. Some agencies have applied GHG emission calculators and models when assessing land and resource management actions in their NEPA reviews. These are done on both the landscape and project- or site-specific levels. Finally, the agencies and stakeholders explained that there are many protocols, models, and calculators that are being developed and they expect the protocols and models to continue to evolve over time. Agency experiences also helped CEQ shape its proposal for this revised draft guidance.

Basic sources of data already exist and are set forth in the revised draft guidance such as the U.S. Global Change Research Program's National Climate Assessment. Further, pursuant to Executive Order 13514, *Federal Leadership in Environmental, Energy, and Economic Performance,* all agencies are required to report their GHG emissions at least at an aggregate level. Specific parameters and metrics for this reporting have been established. These sources are examples of studies that identify GHG emissions from particular actions and effects of climate change at various programmatic and project levels and can be incorporated by reference when appropriate.

Accordingly, CEQ did not identify particular protocols that would be required for assessing GHG emissions and climate change impacts for specific actions; however, examples are provided in the revised draft guidance. The revised draft guidance allows agencies to continue employing protocols that are currently working well and to apply new scientific information to update protocols on an ongoing basis when considering new projects. Not specifying a particular protocol that must be used allows agencies to select the most appropriate protocols on either a programmatic or project level basis, consistent with existing and evolving science. The guidance reminds agencies to provide a reasoned basis for their determinations. We welcome the public's further comments on this issue.

5. How should uncertainties associated with climate change projections and species and ecosystem responses be addressed in protocols for assessing land management practices?

Many commenters stated that the CEQ Regulations already provide the necessary framework to address uncertainties with climate change projections and species and ecosystem responses.[12] Commenters also noted that well-developed scientific tools, like error estimates, confidence intervals, and sensitivity analyses, are available for addressing uncertainty with decision processes. In addition, some commenters expressed a preference that agencies consider all factors and not simply those that are readily quantified using existing tools. Moreover, some commenters indicated that uncertainty can often be addressed with adaptive management.

Response to Comments:

In the revised draft guidance, CEQ advises Federal agencies to analyze GHG emissions and impacts of climate change consistent with the CEQ Regulations and by using available information. Section 1502.22 addresses how incomplete or unavailable information should be addressed in an EIS if it is essential to a reasoned choice among alternatives and there are reasonably foreseeable significant adverse effects on the human environment.[13] CEQ proposes that agencies should analyze reasonably foreseeable effects of a proposed action in light of incomplete or unavailable information when preparing an EA or an EIS and not stop developing their NEPA reviews to await projected or pending studies or methodologies. Agency analyses must reflect the reasoning behind the agency's conclusions and, as called for in the CEQ Regulations, agencies shall ensure the scientific integrity of the discussions and analyses they prepare.[14] We welcome the public's further comments on this issue.

6. How should NEPA analyses be tailored to address the beneficial effects on GHG emissions of Federal land and resource management actions?

Many commenters observed that under NEPA, agencies are obligated to analyze the effects of proposed actions and reasonable alternatives, regardless of whether the effects are beneficial or adverse.[15] They contend that the anticipated effects of some actions, such as thinning forests, production of biofuels, or development of alternative energy projects, could be beneficial. Commenters wrote that the merits of agency proposals could be determined only after the proposal goes through an impartial and rigorous NEPA analysis.

Some commenters suggested that agencies will have to engage in substantial literature and project reviews in order to consider beneficial effects as well as adverse impacts of agency action with respect to climate change. For example, one commenter suggested that NEPA analysis involving a new natural gas-fired electric generating plant should be informed by comprehensive literature review of: The life cycle of the plant; releases during extraction through pipeline leaks and incomplete combustion; life cycles of nitrous oxide warming; and ground level ozone effects. This commenter went on to suggest that such NEPA analysis should compare all GHG emissions from the preferred option of plant construction to the GHG emissions produced by alternatives such as renewable energy development, rate adjustments, and improvements for a smarter transmission grid.

Commenters suggested that the CEQ guidance should recommend the use of interagency consultation and independent, multi-disciplinary scientific consultation for NEPA reviews involving larger programs, new techniques, or complex assessments. Other commenters, however, noted examples of actions taken based on what was believed to be sound environmental review, but turned out to be premised on faulty information. Specifically, commenters raised concerns regarding the possible implications of such mistaken actions in the context of land and resource management actions.

Response to Comments:

CEQ recommends in the revised draft guidance that short- and long-term benefits can and should be considered as part of the analysis of a proposal and alternatives. The agency's purpose and need for action as well as the projected timeframe for the effects of the proposed action and any proposed mitigation will be important to this analysis, and agencies should explain how they have determined the appropriate lifespan for analysis of a project. This approach is consistent with the analysis of any potential impact under NEPA. For example, when analyzing the GHG emissions of a proposed prescribed burn

[12] *See* 40 CFR 1502.22(b).

[13] Section 1502.22 requires that, if incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, then that information must be included in the EIS. If, however, the overall cost of obtaining incomplete or unavailable information is exorbitant or the means to obtain it are unknown, the agency must include in the EIS: (1) A statement that the information is incomplete or unavailable; (2) a statement of the relevance of the information to evaluating reasonably foreseeable significant adverse impacts; (3) a summary of relevant existing credible scientific evidence; and (4) evaluation of the impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

[14] 40 CFR 1502.24 (requiring agencies to ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

[15] *See* 40 CFR 1508.8(b).

conducted to minimize future ecosystem destruction through wildfires or insect infestations, agencies should consider both the immediate loss of stored carbon dioxide (CO_2) together with the long-term CO_2 sequestration that a resulting healthy ecosystem will provide. This would inform the public and the decisionmaker about both the detrimental and beneficial impacts of the proposal. The revised draft guidance clearly indicates that the agency should describe how it considered both short-term actions and long-term effects in fully evaluating both beneficial and detrimental effects. We welcome the public's further comments on this issue.

7. Should CEQ provide guidance to agencies on determining whether GHG emissions are ''significant'' for NEPA purposes? At what level should GHG emissions be considered to have significant cumulative effects? In This Context, Commenters May Wish to Consider the Supreme Court Decision in Massachusetts v. EPA, 549 U.S. 497, 524 (2007).

Most commenters expressed a preference that CEQ should not provide guidance to agencies about determining whether GHG emissions are significant for NEPA purposes. Some commenters urged CEQ simply to reaffirm that the multi-factor analysis set out in the CEQ Regulations is the appropriate way to consider significance, and to clarify that nothing in the draft GHG guidance modifies the CEQ Regulations. Other commenters said that CEQ should affirm in the introduction of the guidance that the level of GHG emissions is only one factor among many in determining significance. Within the existing NEPA framework, it would be inappropriate, according to some commenters, to establish a quantitative level of GHG emissions that would serve as a threshold for significance.

Commenters cited a passage in the 2010 draft guidance that encourages Federal agencies ''to consider, in scoping their NEPA analysis, whether analysis of the direct and indirect GHG emissions from their proposed actions may provide meaningful information to decisionmakers and the public,'' and raised concerns that the word ''meaningful'' could be confused with ''significant.'' Other commenters observed that CEQ was careful to note that the suggested reference point in the 2010 draft guidance is not ''an absolute standard of insignificant effects,'' or by inference, a standard for significant effects.

Many commenters said that the 2010 draft guidance leaves the question of what constitutes a ''significant'' GHG emission level to the Federal agencies, to be determined on a case-by-case basis. Some commenters supported that approach as consistent with current NEPA requirements. Other commenters said a case-by-case approach: Gives agencies an unacceptable level of discretion; creates uncertainty for applicants and others working with Federal agencies; and gives project opponents grounds for litigation. Finally, CEQ received comments on the relevance of *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), and one commenter maintained that the case should guide CEQ to instruct agencies to reduce cumulative effects of GHG emissions from their operations.

Response to Comments:

The revised draft guidance sets forth a reference point of 25,000 metric tons CO_2-equivalent emissions on an annual basis below which a quantitative analysis of GHG emissions is not recommended unless quantification is easily accomplished, taking into account the availability of quantification tools and appropriate input data. Neither the 2010 draft guidance nor this revised draft guidance intend the reference point to be equivalent to a determination of significance. In this revised guidance, CEQ reaffirms that significance remains subject to the standards set forth in CEQ Regulations. The CEQ Regulations require consideration of both context and intensity and set out ten factors that should be taken into account.[16] These include, among others, the degree to which the proposal affects public health or safety, the degree to which its effects on the quality of the human environment are likely to be highly controversial from a scientific perspective (*i.e.,* where there is disagreement over what the likely effects of an action will be), and the degree to which its possible effects on the human environment are highly uncertain or involve unique or unknown risks. This reaffirmation of the significance factors should eliminate any confusion over the utility of the GHG emission reference point in NEPA reviews and reasserts existing NEPA law and practice.

As the Supreme Court noted in *Massachusetts* v. *EPA,* 549 U.S. 497, 523–25 (2007), the issues of global climate change and GHG emissions cannot be addressed in one fell swoop and, although CEQ agrees, the guidance does not rely upon this case. CEQ recognizes that government action occurs program-by-program and step-by-step. Therefore, in evaluating the potential climate impacts, it is important for agencies to assess comparative emissions scenarios associated with alternatives, in situations where these may be meaningful to the decision, and pay particular attention to the duration of expected emissions-producing actions, cumulative effects, and the relative scale of emissions. We welcome the public's further comments on this issue.

[16] 40 CFR 1508.27.

II. Summary of Comments on 2010 Draft Guidance

1. Project-specific Greenhouse Gas Emissions and Qualitative and Quantitative Analyses

a. Climate Change as a ''Global Problem''

Many comments on the 2010 draft guidance focused on the subject of climate change as a global phenomenon. Many individuals and groups who submitted comments emphasized that climate impacts are different from most environmental impacts. Commenters highlighted that climate change is a global problem and there is little (if any) relationship between greenhouse gas emissions from a project in a particular location and the possible environmental effects of climate change in that location. Instead, it is the total global accumulation of greenhouse gas emissions over a long period of time that matters, according to these commenters. The global climate change problem, therefore, is much more the result of numerous and varied sources, each of which might seem to make a relatively small addition to global atmospheric greenhouse gas concentrations. One commenter even urged CEQ to provide agencies with a suggested statement that would be appropriate and sufficient to include in their analyses to reflect the notion of climate change as a global problem. This statement would be: ''[The proposed Federal project] may result, directly or indirectly, in an increase in greenhouse gas emissions. The increase is estimated to be approximately __, which represents __ % of global greenhouse gas emissions. Because greenhouse gas emissions and climate change are a strictly global phenomenon, and because the estimated increase would be negligible, impacts of greenhouse gas emissions from this project would not be significant.'' Some commenters suggested, however, that there are major emitters of greenhouse gases and that these sources can be segregated from the relatively smaller sources, with insignificant effects. Commenters urged CEQ to clarify which sources are likely to be covered and provide definitive categorical exclusions (CEs) to those that are not, to prevent undue burden to not only small entities, but to those entities contributing negligible emissions.

Response to Comments:

This revised draft guidance notes the scientific record that has been created with substantial contributions from the United States Global Change Research Program (USGCRP) on the effects of GHG emissions and climate change, and that NEPA requires Federal agencies to support international cooperation by recognizing the global character of environmental problems and lending support to initiatives, resolutions, and programs. While it is not useful, for NEPA purposes, to link GHG emissions from a proposal to specific climatological changes to a particular site, it is important to discuss these connections. When considering the GHG emissions, agencies do not need to calculate a proposal's GHG emissions as a percentage of nationwide or worldwide GHG emissions unless the agency determines that such information would be helpful to decisionmakers and the public to distinguish among alternatives and mitigations, or that the emissions and sequestration associated with a proposed action may rise to a significant level. Agencies should remain alert to those proposal-specific situations where the level of GHG emissions compared to agency-wide, nationwide, or worldwide emissions would provide a helpful point of comparison.

The revised draft guidance recommends that agencies address GHG emissions and the effects of climate change for all proposed actions. If revising or updating their NEPA implementing procedures, agencies should consider whether their categorical exclusions and extraordinary circumstances and procedures for developing environmental assessments and environmental impact statements take GHG emissions and climate change impacts into account. That consideration should reflect the aggregate nature of the climate challenge which decisionmakers will face when making relevant choices based on a programmatic or project-by-project NEPA review.

b. Project-level Analyses

Many comments also detailed the legal barriers to requiring agencies to include in their NEPA analyses a discussion of project-level greenhouse gas impacts on climate change. They cite *Dep't of Transp.* v. *Public Citizen,* 541 U.S. 752, 767 (2004), where the U.S. Supreme Court stated that the obligation of an agency to discuss particular effects turns on ''a reasonably close causal relationship between the environmental effect and the alleged cause.'' These same comments stressed that climate change is global in nature and the attempt to ''qualitatively'' link proposed individual project emissions and climate change would be arbitrary and speculative.

Response to Comments:

In light of the difficulties in attributing specific climate impacts to individual projects, the revised draft guidance provides a framework for agencies to use when analyzing GHG emissions from and the effects of climate change on a proposed action and its reasonable alternatives. The guidance requires agencies to exercise independent judgment and discretion in determining whether and how potential GHG emissions and climate change effects should be disclosed and considered in preparing their NEPA analyses and documentation. It also emphasizes that the extent of agency analyses should be proportional to the quantity of projected GHG emissions. Moreover, if an agency determines that evaluating the effects of GHG emissions or climate change would not be useful to the decisionmaker or the public in distinguishing between alternatives or mitigations, then the agency should document its rationale for not conducting such an analysis. Furthermore, agencies can rely on basic NEPA principles to determine and explain reasonable temporal and spatial parameters of their analyses to disclose the reasonably foreseeable effect that may result from their proposed actions. However, agencies should still take into account the aggregate nature of the climate challenge which calls upon decisionmakers to make relevant choices on a programmatic or project-by-project basis.

c. Qualitative/Quantitative Analyses

As to qualitative and quantitative analyses, some comments stated that the issue merits a greater discussion of the ''rule of reason'' that must go into the agency's decision-making process. The U.S. Supreme Court has long held that NEPA's mandate is ''essentially procedural . . . to insure a fully informed and well-considered decision,'' and the Federal agency is left with wide discretion to draw the conclusions.[17] The rule of reason is employed to determine whether an environmental impact statement contains a ''reasonably thorough discussion of the significant aspects of probable environmental consequences.'' [18] Under this standard, the review consists only of ensuring that the agency has taken a ''hard look'' at the environmental consequences of the decision. The rule of reason, according to some comments, should ''take the uncertainty and speculation involved with secondary impacts into account in passing on the adequacy of the discussion of secondary impacts.'' [19] Moreover, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.[20] The guidance, according to these comments, should do a better job of discussing how the application of the ''rule of reason'' will affect the agency's decision-making process in light of the present uncertainty surrounding greenhouse gas emissions. Unlike most other environmental consequences, according to these commenters, the analysis of whether a project's greenhouse gas emissions are significant cannot be determined by objectively comparing the projects emissions to commonly accepted scientific thresholds. As noted above by some comments, there is no consensus about the causes and effects of greenhouse gases. Consequently, these commenters believe that the agency's determination necessarily must be qualitative, not quantitative, in nature. Given the global scale of the problem as well as the limitations of the existing models, it is unclear whether a quantitative project-level analysis would provide meaningful information for decision-making. In addition, this type of analysis has the potential, according to the comments, to mislead decisionmakers and the public by creating the impression that there are meaningful differences among alternatives, when in fact there is no valid statistical basis for distinguishing among them. Their concern is that requiring such an analysis would create an additional source of complexity, cost, delay, and litigation risk, without contributing to informed decision-making. Qualitative assessments, focused on statewide and regional trends, have greater potential to provide useful information for decisionmakers. Some commenters stressed, however, that even qualitative assessments, given the global nature of climate change, are often difficult to accomplish and should not be required. Finally, other

[17] *See Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 558 (1978).

[18] *See Oregon Natural Resources Council* v. *Lowe,* 109 F.3d 521, 526 (1997).

[19] *See Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 346 (1989).

[20] *Id.* at 350.

commenters felt that particularly in the face of the high level of uncertainty surrounding the effects of greenhouse gases, the guidance should unambiguously recognize wide discretion by the agencies to determine what information is relevant and adequate for their analysis.

Some commenters stated that while they value and indeed insist on the inclusion of credible scientific quantitative analyses when available, the lack of availability should not in any way deter agencies from engaging in professionally accepted qualitative assessments and identification of appropriate alternatives and mitigation strategies. According to these comments, because agencies repeatedly state that the climate crisis is a classic, and the ultimate, cumulative impact problem, it is used as an excuse for not disclosing their analysis because the agency's sole action will not stop climate change by itself, and/or will only contribute a ''small'' amount to overall greenhouse gas levels or climate impacts when measured quantitatively. An exclusive or over emphasis on quantitative analysis can in fact increase the risk of agencies falling into this trap. This is especially true when agencies attempt to calculate the increase in global temperatures that will result from their actions.

Similarly, some commenters stated that because NEPA requires Federal agencies to take a ''hard look'' at the potential environmental consequences of the proposed action, agencies must link the effects of a proposed action (and alternatives) to specific environmental consequences. Commenters maintain that a general discussion of an environmental problem (*e.g.,* climate change) across a large area does not satisfy NEPA. Simply quantitatively reporting an area or an amount of a resource impacted also does not satisfy this ''hard look'' requirement. The guidance, according to these commenters, takes exactly this quantitative reporting approach. Reporting of emission levels is not useful, according to these comments, and cannot serve as a proxy for an analysis of the impacts of greenhouse gas emissions on the environment. Many comments asked CEQ for examples of specific qualitative and/or quantitative analyses in NEPA environmental analyses.

Response to Comments:

This revised draft guidance gives each agency responsibility for selecting the appropriate level at which to disclose the effects of GHG emissions and climate change, so long as it sets forth a reasoned explanation based on accepted science and whether that information is helpful for decisions. The revised draft guidance recommends that agencies use a reference point to determine when GHG emissions warrant a quantitative analysis taking into account the availability of GHG quantification tools and input data that are appropriate for proposed agency actions. Agencies should evaluate emissions over the life of the project, including a quantitative comparison of the GHG emissions of the alternatives if this would be useful to decisionmakers and the public in deciding among alternatives. Such an evaluation would take into account the availability of reliable calculators for providing quantitative or qualitative analyses. As previously noted, the aggregate nature of the climate change challenge may require decisionmakers to consider a detailed analysis when making reasoned choices among alternatives and mitigations.

d. Other Comments

Other comments received stressed the utility of using programmatic NEPA analyses to consider GHG emissions and climate. They encouraged CEQ to allow the use of a metropolitan planning organization, regional greenhouse gas analysis, or perhaps even statewide greenhouse gas analysis that can be incorporated by reference. This kind of information may provide a better perspective on greenhouse gas emissions rather than a specific project-level analysis, like a transportation project. In fact, some transportation commenters observed that the guidance should more explicitly recognize the applicability of transportation system-level analyses and explicitly allow for analysis at the transportation planning level.

Response to Comments:

The revised draft guidance addresses the use of programmatic approaches. It can be useful to describe agency GHG emissions in the aggregate, as part of a programmatic analysis of agency activities or environmental trends that can be incorporated by reference into subsequent NEPA analyses for agency actions. In addition, Federal programs that affect emissions or sinks, and proposals such as those related to long-range energy, transportation, and resource management programs, may lend themselves to a programmatic NEPA review. For example, if GHG emissions or climate change and related effects are included in a broad (*i.e.,* programmatic) NEPA review for a policy, plan, or program, then the subsequent NEPA analyses for project level actions implementing that policy, program, or plan should tier from the programmatic statement and summarize the relevant issues discussed in the programmatic statement.[21] A tiered approach is used for many types of Federal actions and is particularly relevant to addressing proposed land and resource management actions. When using a tiered approach, agencies should determine whether it is appropriate to compare GHG emissions and assess climate change impacts at either or both the programmatic and project-specific level of analysis.

2. Determining a Level of Significance and the 25,000 Metric Ton Disclosure Threshold

a. The Level of Significance in NEPA Analyses

CEQ received many comments on the 25,000 metric ton disclosure threshold that the 2010 draft guidance indicated may warrant further quantitative or qualitative analysis in NEPA reviews. Some commenters expressed the view that the 25,000 metric ton threshold is not explained clearly. These commenters interpreted the 2010 draft guidance as meaning that the 25,000 metric ton emission level should serve as a threshold indicator for NEPA review. Simultaneously, they cited the 2010 draft guidance as saying that CEQ does not propose this as an indicator of a threshold of significant effects, but rather as an indicator of a minimum level of GHG emissions that may warrant some description in the appropriate NEPA analysis for agency actions involving direct emissions of GHGs. The commenters found this distinction unclear and urged CEQ to clarify the distinction. If CEQ intended to establish 25,000 metric tons of GHG emissions annually as a threshold for NEPA analysis of GHG emissions, this threshold would sufficiently meet the ''may have a significant effect'' standard requiring preparation of an EIS. Therefore, CEQ must clearly articulate this standard in the guidance. Some groups implored CEQ to ensure and further clarify in the guidance that agencies should not equate individual project greenhouse gas emissions at or above 25,000 metric tons per year as a ''significant effect'' warranting the preparation of an environmental impact statement. According to these commenters, some groups may treat the guidance limit as a threshold of ''significance,'' rather than just a reporting or ''meaningful analysis'' standard. This increases the uncertainties and the different

[21] 40 CFR 1502.20, 1508.28.

understandings that various groups will attach to the draft guidance.

Other commenters were adamant that the 2010 draft guidance was unacceptably vague on the key issue of the threshold level of GHG emissions that determines the depth of analysis required under NEPA. For example, they cited the draft guidance that would require, ''Federal Agencies to consider, in scoping their NEPA analysis, whether analysis of the direct and indirect GHG emissions from their proposed actions may provide meaningful information to decisionmakers and the public.'' Then, the commenters noted that CEQ attempted to clarify the word ''meaningful'' by suggesting that if agencies actions are ''reasonably anticipated to cause direct emissions of 25,000 metric tons or more of CO_2-equivalent GHG emissions on an annual basis, agencies should consider this an indicator that a quantitative and qualitative assessment may be meaningful to decisionmakers and the public.'' Some comments indicated that it was unclear if the 2010 draft guidance attempted to define the term ''meaningful.'' Commenters noted that CEQ proposed a quantitative reference point as an indicator of a level of GHG emissions for which an agency ''should'' consider action-specific evaluation of GHG emissions and disclosure of that analysis in NEPA documents. The commenters observed that CEQ was careful to note in the 2010 draft guidance that the suggested reference point is not ''an absolute standard of insignificant effects,'' or by inference, not a standard for significant effects. Therefore, many commenters said that the draft guidance leaves the question of what constitutes a ''significant'' greenhouse gas emission level to the Federal agencies to be determined on a case-by-case basis. This approach, according to the commenters, leaves agencies with an unacceptable level of discretion, entities seeking Federal permits with little certainty, and project opponents with important litigation tools.

Other commenters urged CEQ to reaffirm the multi-factor approach to determining significance in NEPA regulations and documents. They impress upon CEQ to affirm in the introduction of the guidance that the level of GHG emissions is only one factor, among other criteria, that should be considered within the existing NEPA framework and that evaluation of significance under NEPA is done by the agency based on the categorization of actions in agency NEPA procedures and action-specific analysis of the context and intensity of the environmental impacts as set forth in 40 CFR 1508.27. Within the existing NEPA framework, it would be inappropriate, according to these commenters, in a guidance memorandum to establish a single factor—a quantitative level of greenhouse gas emissions—that would be considered to mark significant impacts, thereby automatically triggering the preparation of an environmental impact statement without regard to other criteria laid out in CEQ's NEPA regulations.

Response to Comments:

This revised draft guidance sets forth a reference point of 25,000 metric tons CO_2-equivalent (CO_2-e) emissions on an annual basis below which a quantitative analysis of the GHG emissions is not recommended unless quantification is easily accomplished based on the availability of quantification tools and appropriate input data.

The 2010 draft guidance did not intend the disclosure threshold to be equivalent to or substitute for a determination of significance. In this revised draft guidance, CEQ reaffirms that significance remains subject to the standards set forth in CEQ Regulations. The Regulations require consideration of both context and intensity and set out ten factors that should be considered. These include, among others, the degree to which the proposal affects public health or safety, the degree to which its effects on the quality of the human environment are likely to be highly controversial, and the degree to which its possible effects on the human environment are highly uncertain or involve unique or unknown risks. This reaffirmation of the significance factors should eliminate any confusion over the utility of the GHG emission reference point in NEPA reviews and reasserts existing NEPA law and practice.

b. The 25,000 Metric Tons of CO_2 Disclosure Threshold

Many comments called for the GHG disclosure threshold to be raised from 25,000 metric tons to between 75,000 to 100,000 metric tons per year in order to be consistent with the Environmental Protection Agency's (''EPA'') Tailoring Rule. These commenters noted that, in fact, 25,000 metric tons represented only 5/100.000th of 1 percent (0.00005%,) of the 49 billion tons of global GHG emissions. In its final, Prevention of Significant Deterioration (''PSD'') Tailoring Rule (announced May 13, 2010), EPA raised the thresholds of the PSD and Title V programs applicable to GHGs to 75,000 and 100,000 metric tons per year respectively, rather than the 25,000 metric tons per year identified in the initial, proposed rule. The rationale provided for the 2010 draft guidance's 25,000 metric tons threshold, according to these commenters, was that it has been used and proposed in rulemakings under the Clean Air Act, specifically referencing EPA's Mandatory Reporting of Greenhouse Gases Final Rule (40 CFR 86, 87, 89, et al.). Subsequently, EPA finalized the ''Tailoring Rule,'' establishing GHG emissions thresholds for certain Clean Air Act permitting programs for stationary sources (40 CFR 51, 52, 70, and 71). There EPA set the initial threshold for Clean Air Act permitting requirements for GHG emissions at 75,000 metric tons CO_2-e per year. Beginning in July 2011, the triggering threshold was raised to 100,000 metric tons CO_2-e per year for new sources, but remains at 75,000 metric tons CO_2-e per year for existing sources undergoing modifications. Since the Tailoring Rule establishes GHG emissions thresholds for Clean Air Act permitting programs, these commenters believed that these thresholds were more appropriate indicators of the levels of GHG emissions for which an agency may consider action-specific evaluation of GHG emissions under NEPA than the thresholds in the Clean Air Act's reporting program requirements. This is because, if EPA does not intend to require PSD review or Title V permits for a facility, one could easily argue that facilities below these thresholds should not be required to conduct more in-depth environmental impact analyses based on their GHG emission. Rather, facilities below these thresholds should normally meet NEPA requirements through an environmental assessment resulting in a finding of no significant impact. Therefore, many commenters urged CEQ to bring the indicator level of GHG emissions in the guidance in line with the thresholds in EPA's final Tailoring Rule, establishing the indicator at 75,000 or 100,000 metric tons CO_2-e per year.

Some commenters went so far as to say that there should be no analysis of GHG emissions in the NEPA context. Some stated that there is no reason to draw the draft guidance's 25,000 metric tons disclosure threshold from the EPA reporting and the Clean Air Act rules, for these rules and NEPA serve different ends and are considerably different in purpose and scope. Because NEPA is focused on providing information needed to make better decisions, NEPA necessarily sweeps in more than just those impacts that would violate substantive mandates in other laws. Thus, agencies should quantify and disclose GHG emissions levels and consider alternatives that may reduce those emissions, regardless of whether they ultimately determine that the impacts are significant for NEPA purposes. Other commenters stated that, when compared with nationwide or global GHG emissions, a 25,000 metric ton disclosure threshold is too low to be meaningful for the purposes of a NEPA analysis. CEQ's guidance would be most helpful, according to these comments, if it indicated that individual project GHG emissions typically will be miniscule compared to global emissions and so do not need to be studied in any substantial detail in the NEPA context. The guidance should therefore be limited to requiring publication of the activity's projected annual GHG emissions levels and nothing more.

In contrast, some commenters noted that GHG emissions of less than 25,000 metric tons may have an adverse effect on climate and the environment, especially in the context of all worldwide emissions. Recent science, according to these commenters, suggests the target atmospheric level of CO_2 should be 350 ppm to achieve climate stabilization and avoid disastrous global consequences. Given atmospheric levels of 389 ppm at the time comments were made, commenters stated that we are already on a trajectory that is not sustainable, and we therefore must decrease GHG emissions more rapidly and to a greater extent than previously thought. Thus, any additional contribution of CO_2 would be a step further from target levels and would contribute to a significant cumulative effect. These current conditions coupled with the potential consequences of global warming, according to the commenters, further underscore the need for recommendation and adoption of a zero threshold standard.

Other comments did not quarrel, per se, with the 25,000 metric tons indicator proposed in the 2010 draft guidance. Rather, they strongly recommended CEQ revisit the language used in this guidance and either remove the language allowing the analysis of projects emitting less than 25,000 metric tons of CO_2, or provide specific examples of projects that should be subject to this disclosure threshold despite falling below the minimum threshold. Similarly, the 25,000 metric tons reference point was developed for use in reporting emissions of stationary sources under the Clean Air Act. Some commenters detailed that the analysis of transportation projects differs greatly from that of stationary sources and questioned CEQ's proposal to specify one single reference point for all types of projects performed or authorized by every Federal agency. A comment recommended the CEQ guidance be revised to recognize that Federal and/or state agencies may already have developed thresholds/criteria for performing GHG analyses and that these thresholds/criteria may be more appropriate for agency use than the 25,000 metric tons disclosure threshold specified in the draft guidance.

Response to Comments:

The revised draft guidance sets forth a reference point of 25,000 metric tons CO_2-equivalent GHG emissions on an annual basis below which a quantitative analysis of GHG emissions is not recommended unless quantification is easily accomplished, in light of the availability of quantification tools and appropriate input data. CEQ strongly encourages agencies to use their experience and expertise to determine when a more detailed analysis of GHG emissions is required to ensure that they do not expend their analytical and environmental review resources on those actions for which a quantitative analysis is not helpful in analyzing the environmental impacts or comparing among alternatives and mitigations. When an agency determines that a quantitative analysis is not appropriate, an agency should complete a qualitative analysis and explain its basis for doing so. We welcome the public's further comments on this issue.

3. Adaptation and Considering the Effects of Climate Change

a. Comments Indicating That Climate Change Effects on Proposed Actions Should Not Be a Part of the Guidance

Some commenters noted that the 2010 draft guidance suggests that NEPA documents should include the effects of climate change on the proposed project. This type of analysis and discussion, according to these commenters, would violate the ''rule of reason'' as it would necessarily involve a ''crystal ball inquiry'' into the complex interrelationships of ecosystems and local climates. Again, the rule of reason is employed to determine whether an environmental impact statement contains ''reasonably thorough discussion of the significant aspects of probable environmental consequences.[22]

Even the most sophisticated climatological modeling, according to these commenters, cannot predict precisely how the climate in a particular area will change and how, for instance, water resources will be impacted. Because of the limits of climatological modeling, any such discussion would necessarily be pure conjecture and would not provide information helpful to decisionmakers or the public. Other comments noted that there is presently no generally accepted model for gauging broad-based climate change, let alone assessing how such change (if any) affects individual, Federally-permitted projects. In the absence of generally accepted emissions modeling, these commenters believe that advising agencies to examine the potential impacts of climate change invites agencies (and perhaps even the individual project analysts within an agency) to estimate climate change effects by whatever means they think reasonable, which would result in disparities and even conflicts between agencies and analysts inevitable. If the draft guidance goes forward as proposed, the resulting conflict and confusion will cause Federal permits to be significantly delayed if not completely gridlocked, according to the commenters. Some comments called for the use of adaptive management in localities, as opposed to the issuance of guidance for climate change effects. These commenters claim adaptive management works best when the local land managers have as much flexibility and tools as possible at their disposal to respond to changing conditions. Therefore, it was suggested by these comments that references to analysis of the effects of climate change on the project or Federal action be removed from the final guidance.

Response to Comments:

NEPA is intended to inform decision-making by disclosing not only the reasonably foreseeable effects of a proposed action on the environment, but also any effects that environmental processes may have on the proposed action and on resources anticipated to be impacted by the proposed action. As such, NEPA supports decision-making that helps strengthen Federal resources and investments and make them more resilient against environmental impacts. The revised draft guidance encourages agencies to determine whether and to what extent to prepare an analysis based on the availability of information, the usefulness of that information to the decision-making process, and the extent of the anticipated environmental consequences. See also the response to the next comment.

b. Comments Indicating That Climate Change Effects on Proposed Actions Should Be a Part of the Guidance

Other commenters believe that the effects of climate change should be included in the guidance. As the

[22] *See Oregon Natural Resources Council* v. *Lowe*, 109 F.3d 521, 526 (1997).

Intergovernmental Panel on Climate Change stated ''climate changes are being imposed on ecosystems experiencing other substantial and largely detrimental pressures.'' CEQ therefore appropriately recognizes, in the view of these commenters, that ''[c]limate change can increase the vulnerability of a resource, ecosystem, or human community,'' exacerbating the impacts of actions that previously might have had more limited effects. These commenters believe that this recognition and the attendant analysis under NEPA is essential in meeting the goals of Executive Order 13514 which requires Federal agencies to assess their risk and vulnerabilities in light of a changing climate and in meeting the goals of the Interagency Climate Change Adaptation Task Force. One comment even noted that climate change interactions are pervasive, making it rarely appropriate, if ever, to confine ''discussion of climate change in an environmental assessment or environmental impact statement [in] a separate section,'' as CEQ suggested in its guidance. Instead, the commenter suggested that CEQ should recognize that such synergisms are not only common, but may render some minor impacts significant, either directly or by undermining mitigation strategies. This integrated consideration should extend from impact analysis to shaping alternatives and mitigation decisions. Agencies, according to the comment, should recognize that ecosystems may be declining or changing even under a ''no action'' alternative, and should forecast the likely nature of those changes. From this baseline, the comment suggested that agencies should design and select between alternatives with the understanding that reducing ecosystem stressors, including those resulting from the proposed action, will often be necessary in order to limit significant environmental impacts. The comment emphasized that CEQ should provide guidelines to ensure that agencies: (a) Analyze the impacts of climate change on the affected environment and include those effects in their baseline for analysis of alternatives, mitigation, and in the ''no action'' alternative; (b) include in their cumulative effects analysis the impacts of climate change on the affected environment combined with the impacts of the proposed action and other reasonably foreseeable effects; and (c) include in their alternatives analysis actions that may avoid, reduce, and/or otherwise ameliorate the direct, indirect, and cumulative effects of climate change and the proposed action on the affected environment.

Some comments indicated that climate change should be a consideration in project analysis when located in areas that are considered vulnerable to specific effects of climate change within the project's lifetime. Because the impacts from climate change are predictions and can vary so widely by region, NEPA, according to the comments, should be open to allowing for differences in analysis. As to geographic scale, comments noted that climate change effects on temperature, stream flow, and precipitation patterns are likely to be characterized at the regional level and interpolated to a more localized level, if possible. However, overall, the commenters praised the 2010 draft guidance for recognizing that there are ''limitations and variability in the capacity of climate models to reliably project potential changes at the regional, local, or project level.'' Some other comments suggested that at present, there are few, if any, downscaling models that are sufficiently accurate and robust to make useful predictions about the effects of climate change on local or even regional resources, including effects on water availability, at the watershed level or at a specific project location. Thus, until such downscaling models exist, the commenters suggested that any analysis of the regional and local effects of climate change on water resources, among other environmental resources, would be purely speculative and Federal courts have held that Federal agencies should not consider speculative effects under NEPA. These comments did not categorically rule out the assessment of climate change effects on projects, but were rather more tentative in their recommendations, conditioning their recommendations on the existence of appropriate models. One commenter cited recently introduced Federal legislation supporting the conduct of regional emission analysis and assessing regional adaptation to the effects of climate change as part of the metropolitan transportation planning process. Despite the aforementioned limits of the methods of assessing climate change impacts, one commenter said that it would be reasonable to use existing studies, such as the New York State Energy Research and Development Authority's ClimAID study, to qualitatively assess climate change effects occurring in a project area.

As a part of the broader effort to assess climate change impacts and undertake adaptation, one commenter proposed that CEQ direct agencies to produce their own specific procedures (whether in the form of guidance or rulemaking) to explain how they will consider environmental impacts on a changed environment. Many agencies have very specific mandates with very specific environmental effects, and directing them to tailor this consideration to their own efforts should produce improved analysis of climate changed environments related to the agencies' actions. By having each agency conduct its own process, the agencies will (1) benefit from input from the public that works most closely with them; (2) be able to create protocols to gather all available and easily determined data on changed environments in areas under their jurisdiction; and (3) consider creating protocols to formally cooperate and share information with other Federal agencies, state and local government, and tribes on expected local changes in the environment. These commenters contend, as noted above, that much information is currently fragmented. If agencies had a formal procedure for continually consulting with other agencies, relevant information would be dispersed more quickly and effectively. Such an approach would require agencies that rely on ''adaptive management'' when accounting for unknown environmental changes to specify a regular procedure for gathering information and using that information to make decisions going forward, including revisiting earlier agency actions.

Other comments, which also called for CEQ's NEPA guidance to incorporate climate change effects, requested that CEQ limit the consideration of the impacts of climate change on proposed actions to those actions that will occur far enough in the future that changes might be both evident and material. It is a waste of agency resources and not relevant to the agency decision, according to these commenters, to require a consideration of climate change impacts on an action that will be concluded in 5, 10 or even 20 years. For purposes of NEPA analysis, it was suggested that the 2010 draft guidance be revised to advise agencies that NEPA documents should consider the potential impacts of climate change on those resources affected by climate only when those impacts are expected to extend at least beyond 2050.

Some commenters agreed that the observed and projected effects of climate change that warrant consideration in a NEPA document should typically be described as part of the proposed action's ''affected environment.''[23] However, according to these commenters, as the 2010 draft guidance correctly recognized, ''agencies should ensure that they keep in proportion the extent to which they document their assessment of the effects of climate change.'' In this light, the commenters suggested that the draft guidance should fully explain how climate change effects should be considered as part of the ''affected environment.'' For example, the commenters requested that the guidance distinguish between a project's GHG emission-related effects on the environment and the effects of climate change on the area covered by a project. With respect to the former, climate change is a global phenomenon and, as recognized by the 2010 draft guidance, changes in global temperatures cannot be linked to specific sources of emissions. Consequently, the guidance should recognize that the ''affected environment'' of a GHG emitting project cannot be the entire world, and it should provide some direction on how the ''affected environment'' will be determined for climate change-related effects. Other commenters were confused as to why CEQ suggested that the observed and projected effects of climate change warranting consideration are most appropriately described as part of the current and future state of the proposed action's ''affected environment.'' Section 1502.15 of the CEQ Regulations does not suggest, according to these commenters, that this section discuss future states of the affected environment, but instead states that the affected environment describe the environment of the area to be affected by the project alternatives. There is an implicit understanding that there is natural change in ecosystems and environmental resources; these systems and resources are not static. It was unclear to commenters why climate change effects would best be discussed as part of the affected environment rather than as a cumulative impact.

Response to Comments:

The revised draft guidance proposes that climate change effects should be considered in the analysis of projects that are designed for long-term utility and involve resources considered vulnerable to specific effects of climate change within the timeframe of the proposed project's anticipated useful life. The focus of this analysis should be on those aspects of the environment that, based on the interaction between the proposed action and the human environment, are affected by the proposed action and on the significance of climate change on those aspects of the environment. Agencies should consider the specific effects of the proposed action (including the proposed action's effect on the vulnerability of affected ecosystems and communities), the nexus of those effects with projected climate change effects on the same aspects of our environment, and the implications for the environment to adapt to the projected effects of climate change. In addition, the particular impacts of climate change on vulnerable communities may be considered in the design of the action or the selection among alternatives so that the proposed action will be more resilient and sustainable and thereby have lesser impacts on those communities. Using NEPA's ''rule of reason'' that governs the level of detail in any environmental effects analysis, agencies should ensure that they keep the extent to which they document their assessment of the effects of climate change in proportion to the potential for impacts.

4. Indirect Effects and Emissions

CEQ received many comments that used the terms ''indirect effects'' and ''indirect emissions'' interchangeably, when in fact these two terms have distinct meaning. Note that the summaries of the comments, below, also use the terms interchangeably to reflect how these comments were presented to CEQ.

a. Indirect Effects

Many commenters noted that CEQ should clarify the circumstances under which it is necessary and appropriate to consider the indirect effects of GHG emissions. The 2010 draft guidance, according to these views, provides little instruction on how to analyze appropriately the indirect impacts (assuming that those impacts are brought about as a result of the Federal action and are reasonably foreseeable, which are prerequisites to analysis under NEPA), and could prompt more calls for similar modeling exercises. CEQ, according to these commenters, could provide valuable guidance to Federal agencies that such indirect impacts, which have been demonstrated to be negligible and predominantly attributable to other independent factors, need not be exhaustively analyzed as part of a NEPA review. Other commenters thought that agencies should be further reminded that the indirect effects of a proposed action are to be analyzed only if the impact is reasonably foreseeable.[24] Although they commended CEQ for acknowledging that any analysis of indirect impacts must be bounded by the limits of feasibility, they urged CEQ to include the ''reasonable foreseeability'' language consistent with 40 CFR 1508.8.

Additionally, they criticized CEQ for not providing an alternative threshold for considering indirect effects. Commenters noted that given the long-term nature of global warming, it is difficult to conceive of a climate change situation where the direct effects of a decision are significant, but the indirect effects are not significant. Other commenters agreed with CEQ and stated that only direct emissions should be considered when determining whether an environmental impact statement is required for a particular project above the threshold. The guidance should make clear, according to these commenters, that a project's indirect GHG emissions do not constitute a ''significant impact'' for two reasons. First, according to these commenters, these indirect emissions are inherently insignificant compared to global GHG emissions and do not cause ''significant'' impacts. NEPA directs Federal agencies to prepare an environmental impact statement for ''major Federal actions significantly affecting the quality of the human environment.'' Second, they contend that indirect GHG emissions should not trigger the requirement that a Federal agency prepare an environmental impact statement because these indirect effects are too remote from the alleged cause. These commenters point out how the U.S. Supreme Court has held that if there is a reasonably close causal relationship between the environmental effect and the alleged cause, then an environmental impact statement is required. The court compared this type of causation to the tort law doctrine of proximate cause; a ''but for'' causal relationship is insufficient for an alleged cause to require an environmental impact statement for a project.

Some commenters thought that climate change impacts should be treated as indirect effects, rather than direct effects of GHG emissions. Under the CEQ's regulations, direct effects are those caused by the action and occur at the same time and place. However, because climate change does not occur at the same time and place as the GHG emissions, these commenters believe that these impacts are not properly considered ''direct effects.'' Rather, they conclude, it would be more appropriate to consider potential climate impacts as an indirect effect or cumulative impacts of a project's projected GHG emissions. Indirect effects are caused by the action

[23] *See* 40 CFR 1502.1.

[24] *See* 40 CFR 1508.8.

but are removed in time and distance, even though the effects are reasonably foreseeable. The 2010 draft guidance conceded that climate change is the result of ''numerous and various small sources,'' and that each of the sources only makes a ''relatively small addition to the global atmospheric conditions.'' Accordingly, the commenters observed that because the climate impacts from the emissions from a single project are a tiny fraction of the global emissions, treatment of these impacts as an indirect effect, or a cumulative effect, is more appropriate.

b. Indirect Emissions

CEQ should clarify its discussion of indirect emissions, according to some commenters. The guidance, according to these commenters, should state that only those indirect emissions that are reasonably foreseeable as a result of the project and meet the necessary level of significance, should be considered. Emissions, which are theoretical or otherwise not dependent on the proposed action for their occurrence, should be eliminated from the analysis. Thus, the final guidance should clarify that Federal agencies must recognize and discuss the known uncertainties of GHG emissions, and as the ability to quantify emissions or accurately assess the link between emissions and climate effects decreases. Some commenters suggest that the ''indirect effects'' definition helps establish ''indirect emissions.'' At the same time, they emphasize that indirect emissions are not akin to indirect effects. Specifically, they contend that NEPA requires consideration of ''indirect effects'' (limited to non-speculative environmental consequences that are proximately caused by a major Federal action). Commenters maintain that ''indirect'' GHG emissions are not truly ''indirect effects'' of an action. An emission is not an effect, and any resulting harm to the environment is the environmental consequence of interest to an agency. In applying the concept of ''indirect effects,'' CEQ, according to these commenters, should advise agencies that they need not consider ''indirect'' GHG emissions unless those emissions (1) bear ''a reasonably close causal relationship'' to the major Federal action being reviewed; (2) are ''reasonably foreseeable;'' and (3) are not speculative. Thus, the issue of whether to consider ''indirect emissions'' should be governed by the same test applicable to ''indirect effects.'' This clarification, they assert, will allow agencies to expend their resources wisely and focus their analysis without speculating about potential indirect emissions not clearly associated with or caused by the major Federal action being reviewed.

In terms of clarifying what is meant by ''indirect emissions,'' other commenters believe that it may be helpful for CEQ to consider adopting, with one minor modification, the definition of ''indirect emissions'' from the EPA regulations implementing the conformity provisions of the Clean Air Act (CAA) for this purpose.[25] The conformity regulations apply only to emissions of criteria pollutants from Federal actions in nonattainment areas. Nevertheless, the commenters argue, these regulations provide a serviceable definition of indirect air emissions that has been applied by Federal agencies for many years. The conformity regulations define ''indirect emissions'' as those emissions that ''(1) [a]re caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and (2) [t]he Federal agency can practicably control and will maintain control over due to the continuing program responsibility of the Federal Agency.'' Under the air conformity program, emissions are ''caused by'' a Federal action if the emissions ''would not otherwise occur in the absence of the Federal action.'' Overall, commenters asserted the need for the final guidance to clarify what CEQ means by ''direct'' and ''indirect'' emissions versus ''direct'' and ''indirect'' effects.

In addition to providing clarity on the concept of indirect emissions, some commenters noted that on page 5 of the 2010 draft guidance CEQ addressed the treatment of ''the energy requirements of a proposed action and the conservation potential of its alternatives.'' CEQ went on to state that agencies should evaluate GHG emissions associated with energy use and mitigation opportunities. An important additional consideration, according to these commenters, would be an evaluation of the direct and indirect effects of the alternatives themselves on potential GHG emissions.

A few commenters thought CEQ's proposal for indirect GHG emissions analysis should be removed in its entirety. Indirect GHG emissions analysis would encompass sources that are upstream and downstream of the action, with no discernable limit or boundary. Other commenters felt that if indirect emissions are not included, the Federal goals of energy conservation and reduced energy use could not be fully realized. Estimating many types of indirect emissions, they assert, is entirely possible and it is in the project design phase where energy efficiency measures and access choices can most effectively be incorporated. Thus, according to these commenters, even a brief qualitative analysis of both the direct and indirect GHG emissions of a proposal may reveal cost-effective reduction measures. A well-done qualitative analysis may also provide a rough quantitative estimate that can help the lead agency determine whether or not the analysis is adequate.

Finally, there were some transportation issues raised, concerning the concept of indirect emissions. The introduction to the 2010 draft guidance advises agencies to consider in the scoping process whether the direct and indirect GHG emissions of a proposed action may provide meaningful information to decisionmakers and the public. It is not clear, according to some commenters, what would be considered direct emissions as opposed to indirect emissions for transportation projects. The distinction is critical in determining how to interpret the suggested indicator value. The determination of how to define direct and indirect impacts for transportation projects, and the decision of how to apply the indicator value, is best left to the discretion of Federal transportation agencies, according to these commenters. Similarly, for transportation infrastructure projects, direct and indirect GHG emissions should not be defined to include the emissions associated with the production (drilling, refining, etc.) or distribution of fuel to the vehicles that use the transportation infrastructure. This would place an unreasonable burden on transportation agencies, according to commenters, and would require an analysis that is not completed for any other resource evaluated under NEPA. Under this approach, the project impact should be the increase (or decrease) of emissions from the increase (or decrease) in vehicles using the transportation infrastructure due to the project.

Response to Comments:

Statutes, Executive Orders, and agency policies, establish the Federal government commitment to eliminating or reducing GHG emissions. Information on GHG emissions (qualitative or quantitative) that is useful and relevant to the decision should be used when deciding among alternatives. The revised draft guidance reminds agencies that, as with all impacts, agencies are required to consider reasonably foreseeable direct and indirect effects, and the cumulative nature of those effects when analyzing proposed Federal actions. The revised draft

[25] *See* 40 CFR 93.152.

guidance explains that agencies should consider the affected environment by looking for effects of past, present, and reasonably foreseeable future actions that will increase or change in combination with the direct and indirect effects of the proposal. Agencies should apply the rule of reason which states that agencies determine whether and to what extent to prepare their NEPA reviews based on the usefulness of potential information to the decision-making process, and to focus their analyses on issues that deserve study.

CEQ is rejecting a hard and fast rule requiring or prohibiting consideration of indirect emissions. The focus should be and remains on the foreseeability of identifying potential effects and the extent of those effects.

5. Life-cycle Greenhouse Gas Emissions

Many commenters claim CEQ should direct Federal agencies to employ life-cycle GHG assessments (including consideration of avoided GHG emissions) to determine the full GHG impacts of proposed agency actions and associated private-sector activities and processes. The environmental impact of the life cycle of the proposed action—and not just of the project—must be assessed, according to commenters. Agencies should be scoping ways not only to minimize or mitigate potential adverse impacts but to restore and improve the environment and atmosphere at the same time. There is no reasoned justification, according to these commenters, for focusing on a project's annual, rather than lifetime, emissions as the indicator level of significance. Nothing in NEPA, they assert, restricts the agencies' impacts analysis to a rate or a one-year time scale. If CEQ does not delete the discussion of an indicator level from the final guidance, according to these commenters, it should at least buttress its indicator level with a life-cycle or life-of-the-project ''volume'' indicator. That level should be set low enough to capture actions that may not emit the full threshold rate in any given year, but would still contribute to the larger overall volume of GHG emissions over the life of the project. Thus, the commenters suggested that if CEQ wishes to indicate a level of significant emissions, it must ensure that its indicator accounts both for the rate and volume of the emissions over the life of the project.

One of the commenters recommended that CEQ should affirmatively direct agencies to assess GHG impacts of agency actions in accordance with the following guidelines: (1) GHG impacts should be assessed on a life-cycle basis, as appropriate, taking account of direct, indirect, and avoided GHG emissions; (2) direction should be provided to use peer reviewed and agency life-cycle assessment tools and models; (3) GHG impacts should not be limited to source emissions as reported under EPA's GHG Reporting Rule and other EPA GHG inventory tools; (4) the Global Warming Potential (''GWP'') of each GHG should be based on the latest consensus scientific data, which, as of this date, should reflect the GWP values set forth in the Intergovernmental Panel on Climate Change (IPCC) Fourth Assessment Report; (5) consistent with international and EPA precedent, the primary focus should be on anthropogenic sources of GHGs, including fossil CO_2 and methane; and (6) uncertainties in data, models, methods, and resulting calculations should be analyzed in assessing direct and indirect life-cycle GHG emissions, but the existence of such uncertainty should not preclude use of life-cycle assessment of GHG emission impacts. Another commenter contends that if a full life-cycle analysis is required, rather than using the length of time of all the phases and elements of the proposed action over its expected life, the guidance should also require the calculation to include the life of the pollutant or the traceable lifetime of the effect of the action on the climate, such as the sequestration lost through a large clear-cutting of forest when selective harvesting might have retained more carbon in the standing trees and soil. Moreover, the commenter stated that guidance should be provided to Federal agencies to retain existing carbon stores in carbon dense systems such as mature and old-growth forests.

CEQ received comments that requested further clarification in the guidance that a full life-cycle analysis is not required (for example, the GHG analysis for a highway project should not include the emissions associated with the manufacturing of the vehicles using the transportation facility), at least until this type of information becomes available. These commenters indicated that full life-cycle analyses are not readily available at this time and should not be used anyway as they will result in double counting of emissions among various parties. On a related note, commenters pointed to several provisions of the 2010 draft guidance which they thought suggested use of an alternative NEPA reference point based on a project's ''lifetime'' cumulative GHG emissions rather than annual emissions. The comments highlighted the following passage from pages 1 and 2 of the 2010 draft guidance as an illustration of this approach: ''For long-term actions that have annual direct emissions of less than 25,000 metric tons of CO_2-equivalent, CEQ encourages Federal agencies to consider whether the action's long-term emissions should receive similar analysis.'' Commenters stress that the 2010 draft guidance offers no specific reference point based on cumulative, lifetime emissions, probably because this metric is not used in the EPA's Greenhouse Gas Reporting Rule, EPA's Tailoring Rule, the various proposals for climate change legislation, or any other commonly regarded policy. A lifetime emissions standard, particularly one with no reference point, according to commenters, threatens to expand NEPA analysis to a vast new array of Federal actions. The recognized metric for GHG policy analysis and regulatory standard setting, as reflected in EPA's Greenhouse Gas Reporting Rule, EPA's Tailoring Rule, and elsewhere, is annual emissions. CEQ, according to the commenters, has no empirical or legal basis for suggesting a NEPA analysis reference point based on lifetime, cumulative GHG emissions, and this aspect of the proposed guidance should be withdrawn in its entirety.

Response to Comments:

The revised draft guidance states that analysis of GHG emissions sources should follow the same basic NEPA principles and account for all phases and elements of an action, including both short- and long-term effects and benefits, over the expected life of the project and the duration of the generation of emissions. It is important to recognize that agency-proposed land and resource management actions can result in both carbon emissions and carbon sequestration, and agency analyses should reflect a comparison of net GHG emissions and carbon stock changes that are relevant in light of the proposed actions and the timeframes under consideration. Agencies have substantial experience estimating GHG emissions and sequestration, and numerous tools and methods are available to efficiently make such estimates. The revised draft guidance encourages agencies to use tools for quantification when a quantitative analysis would be useful for informing decisionmakers and the public. When a quantitative analysis would not be useful, a qualitative analysis should be completed, and an agency should explain its basis for doing so.

6. Preserving the Procedural Mandate of NEPA

Some commenters noted that certain statements in the 2010 draft guidance could be misinterpreted by other Federal agencies and the public as creating new, binding substantive or procedural obligations. The commenters suggested that CEQ should clarify that the guidance is not intended to do so. These commenters point to the statutory language and court decisions, which detail that NEPA is an action-informing statute, and not an action-forcing document. Additionally, some comments cited *Robertson* v. *Methow Valley Citizens,* 49 U.S. 332, 333 (1989), where the Court held that ''it is well settled that NEPA itself does not impose substantive duties mandating particular results, but simply prescribes the necessary process for preventing uninformed-rather than unwise-agency action.'' Statements such as, ''CEQ proposes to advise Federal agencies that they should consider opportunities to reduce GHG emissions caused by proposed Federal actions and adapt their actions to climate change impacts throughout the NEPA process and to address these issues in their agency NEPA procedures[,]'' concern certain commenters. These commenters also point to statements that, when a proposed action meets an applicable threshold for quantification and reporting of GHG emissions, ''CEQ proposes that the agency should also consider mitigation measures and reasonable alternatives to reduce action-related GHG emissions.'' This direction, according to the commenters, appears to go beyond the scope of NEPA. It goes, they contend, beyond describing how and when to analyze environmental impacts and what environmental impacts are to be considered, thereby transforming the NEPA process into an action-forcing process by advising agencies that they need to consider or even require agencies to include mitigation and adaptation measures as part of their decisions. It also appears, these commenters contend, to elevate considerations of GHG emissions and impacts of climate change above other environmental impacts for purposes of assessing alternatives. Environmental assessments or environmental impact statements are likely to evaluate a number of different environmental factors in addition to GHG emissions and impacts of climate change which may have greater impacts on the environment than those produced by GHG emissions or climate change, according to commenters. Similarly, commenters said that a direction to consider mitigation and adaptation measures may inhibit or restrict agency decision-making with respect to other alternatives. Other commenters point to the same introduction to the 2010 draft guidance and indicate that the statement on the reduction of GHG emissions would include projects requiring Federal permit decisions. They are concerned that the guidance will be used as a backdoor to impose mandatory Federal GHG emission reductions, for example through mitigation required as a *quid pro quo* in order to obtain a finding of no significant impact. The goal of reducing GHG emissions through mandatory emission limits should be accomplished through comprehensive national climate legislation, rather than through NEPA guidance documents, according to these comments.

Other commenters stressed that NEPA can be used to have an influence on agencies' substantive policies. These commenters said that NEPA provides that ''the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.'' [26] The commenters highlight that some agencies have taken a step forward, at least at the broad policy level. For example, they cite the Department of the Interior (''Department'') which, through a secretarial order, has acknowledged that ''climate change is impacting natural resources that the [Department] has the responsibility to manage and protect.'' [27] The secretarial order ''ensures that climate change impacts are taken into account in connection with Department planning and decision-making.'' [28] The secretarial order does this by requiring the Department to ''consider and analyze potential climate change impacts'' when it: Undertakes ''long-range planning exercises''; ''set[s] priorities for scientific research and investigations''; ''develop[s] multi-year management plans''; ''and/or'' ''mak[es] major decisions regarding the potential utilization of resources under the Department's purview.'' [29] The commenter state's that while the Department's secretarial order can certainly be strengthened, in particular in terms of its implementation, all Federal agencies should be encouraged to take similar policy action and to ensure that those policies are implemented through actual management decisions. Indeed, the commenters believe that CEQ guidance could help raise Federal agencies' comfort level in using their substantive and procedural authorities to address GHG emissions and climate change. These commenters welcomed this result.

Response to Comments:

The revised draft guidance points out that NEPA is intended to promote disclosure and consideration of potential environmental effects, and to provide the opportunity to mitigate them. NEPA recognizes that Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions, and any reasonable alternatives and mitigations, before deciding to take action. The revised draft guidance does not create any new or additional regulatory requirements for project proponents. It simply instructs agencies on how to consider and address the GHG emissions from and the effects of climate change on their proposed actions within the existing NEPA regulatory framework.

Climate change impacts will have important consequences for the resilience of Federal actions, including more frequent heat waves and high-intensity precipitation events, rising sea levels, and more prolonged droughts. The revised guidance emphasizes that agencies should consider mitigation measures and reasonable alternatives to reduce action-related GHG emissions in the same fashion as they consider them for any other environmental effects.

7. Incomplete or Unavailable Scientific Information

The CEQ guidance on the analysis of GHG emissions under NEPA should, according to some commenters, make clear that NEPA regulatory provisions regarding incomplete or unavailable information should be appropriately used in addressing any analysis of GHG emissions. Some commenters have serious concerns over the validity of the modeling and assessment tools currently available for climate change. They contend that the CO_2 emissions estimates from these models are only useful for a comparison between alternatives. These commenters say that the numbers are not necessarily an accurate reflection of what true CO_2 emissions will be because CO_2 emissions are dependent on other factors which are not part of the models that are currently available. Further, in terms of assessment, the comments point to uncertainty over assessing an individual project's effect on climate change and they place an emphasis on the need for better tools to assess the

[26] *See* 42 U.S.C. 4332(1).

[27] U.S. Dept. of the Interior, Sec. Or. 3226, Section 1 (Jan. 19, 2001).

[28] *Id.*

[29] *Id. at* Section 3.

climate change effects on a project's environment. Along the same lines, other commenters pointed to what they perceive as conflicting parts of the 2010 draft guidance when it mentions that ''. . . environmental documents reflect this global context and be realistic in focusing on ensuring that useful information is provided to decisionmakers for those actions that the agency finds are a significant source of greenhouse gases,'' but then the guidance goes on to refer to ''. . . the scoping process to set reasonable spatial and temporal boundaries for this assessment and focus on aspects of climate change that may lead to changes in the impacts, sustainability, vulnerability, and design of the proposed action and alternative courses of action.'' These comments indicate that agencies will be left with the daunting task of developing assessment protocols and standards to evaluate the impact of local actions in a global context in the absence of air quality standards or models. Given the lack of generally accepted protocols for modeling climate change, an agency's NEPA procedures, these commenters contend, should be limited to: (1) Quantifying the project's reasonably anticipated GHG emissions;
(2) noting that the project's incremental contribution to global GHGs is extremely small; and
(3) observing that there is no standard methodology to determine how incremental GHG contributions of this magnitude translate into effects on global climate.

Some commenters called for CEQ to provide more guidance to agencies as to how to address uncertainties and to recognize that there are very large levels of uncertainty associated with the relationship between agency actions and climate change effects. The range of outputs of climate models is huge, varying even more in their predictions about any particular region. They differ in predictions of both temperature and precipitation, as well as in seasonal trends of each. Therefore, the commenters concluded that these limitations make scenario uncertainty enormous. As a result, they encourage CEQ to recommend an approach that agencies should follow for handling uncertainties under NEPA. That approach should include explicit acknowledgment of the uncertainties and estimates of how they affect emission possibilities as well as climate change projections, if any. The commenters point to the documents that CEQ recommends as the ''best scientific information available on the reasonably foreseeable climate change impacts'' to show that climate change science cannot yet establish an agreed-upon baseline of environmental conditions to track the effects of climate change, and likely never will.[30] These commenters contend that the 2010 draft guidance directs Federal agencies to the ''Synthesis and Assessment Products of the U.S. Global Change Research Program'' (''USGCRP'') as a source of the ''best scientific information available on the reasonably foreseeable climate change impacts'' to identify a baseline. However, the commenters point out that this latest 2009 Assessment includes an entire chapter, ''An Agenda for Climate Impacts Science,'' focusing on what the USGCRP does not know about ''climate change impacts and those aspects of climate change responsible for those impacts.''[31] Most notably, the 2009 Assessment indicates that ''agreed-upon baseline indicators and measures of environmental conditions that can be used to track the effects of changes in climate'' do not yet exist.[32] The commenters contend that without an agreed-upon baseline, it is difficult to understand how a NEPA analysis (or any scientific analysis for that matter) can proceed with any accuracy. Ultimately, according to the commenters, the 2009 Assessment highlights significant, and arguably insurmountable, shortcomings in climate change science that will inhibit an agency's ability to conduct the informed and realistic analysis required by NEPA. Assuming that climate change analysis can be conducted consistent with NEPA, the scientific uncertainties must be clearly disclosed, according to commenters. The comments cite the NEPA implementing procedures for when an agency is faced with ''incomplete or unavailable information, the agency shall always make clear that such information is lacking.''[33] Therefore, commenters said that because the USGCRP documents show that a baseline from which to predict the rate, scope, and effects of climate change simply does not yet exist, any NEPA analysis of climate change and/or GHGs must clearly disclose the existence of these uncertainties and avoid speculative conclusions. CEQ guidance should, according to these commenters, include a clear statement of the uncertainties and provide guidance that the statement should be included in every NEPA document that analyzes climate change.

Other commenters urge CEQ to wait to issue its final guidance because a variety of companies, trade organizations, small businesses, and individuals have recently challenged the EPA's Endangerment Finding in Federal court, in addition to several other legal challenges to aspects of EPA's regulation of GHGs. These challenges come from fifteen states, the Southeastern Legal Foundation, including sixteen Members of Congress, the National Association of Manufacturers, and many other groups. Some commenters believe strongly that CEQ should delay the issuance of its guidance.

Response to Comments:

The revised draft guidance is clear that agencies should use current scientific information and methodologies for assessing GHGs and climate effects. Agencies are reminded of Section 1502.22 of the CEQ Regulations stating that when evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement, if information essential to a reasoned choice among alternatives is incomplete and the overall costs of obtaining that information are not exorbitant, then an agency shall obtain and include that information.[34] If the information does not exist or would be too costly to obtain, agencies must determine whether the adverse effects are reasonably foreseeable and significant, consistent with section 1508.27 of the CEQ Regulations. Agencies will also need to set forth the relevant, existing, and credible scientific evidence. There is a growing body of scientific evidence on GHG emissions and impacts of climate change that agencies may already be able to rely on, provided they set forth clear reasoning for using that science.

8. Concerns With Using EPA Methodologies

Many of the comments on the 2010 draft guidance were directed at the 25,000 metric ton disclosure threshold. Commenters opposing the 25,000 metric ton threshold do not believe that this threshold has a sound legal or factual basis for the purposes to which CEQ proposes to apply it. EPA chose the threshold for use in the regulation of air pollutant emissions from large stationary sources that is required under the Clean Air Act; this is a program of limited scope, applicable to a well-

[30] *See* Draft 2010 Guidance at p. 8.

[31] *See* ''Synthesis and Assessment Products of the U.S. Global Change Research Program'' at p. 153.

[32] *Id.* at 155.

[33] *See* 40 CFR 1502.22.

[34] 40 CFR 1502.22(a).

defined and small universe of sources. EPA chose this number based on administrative necessity, judging that it was 1) low enough to pull in the majority of large stationary sources of greenhouse gas emissions, but also 2) high enough to limit the number of sources covered that state and local air pollution permitting agencies could feasibly handle. Administrative necessity underlies the EPA thresholds, and EPA made a factual case for the need for this threshold, based on actual staffing, resources needed for permit processing, and financial data from state and local permitting agencies. CEQ, according to the commenters, has not presented any comparable data in its proposal that would necessitate the artificial, non-science-based 25,000 metric tons per year threshold it proposes for its NEPA guidance. Without such data or other comparable justification, the proposal does not reflect a scientific judgment about whether a particular quantity of emissions will ''meaningfully'' affect the global climate. Similarly, several commenters note that the Clean Air Act rules and NEPA serve different ends and are considerably different in purpose and scope. NEPA requires consideration and disclosure of impacts to inform decision-making and the public, with the goal of implementing the nation's environmental policies; the Clean Air Act focuses on quantitative standards with specific regulatory consequences. Therefore, these commenters believe that, because NEPA is focused on providing information needed to make better decisions, NEPA necessarily sweeps in more than just those impacts that would violate substantive mandates in other laws, and therefore, inappropriately uses Clean Air Act standards.

Response to Comments:

The revised draft guidance gives agencies the discretion to select the appropriate method of analysis for assessing the effects of GHG emissions and climate change, so long as the agency sets forth a reasoned explanation based on accepted science and whether that information is helpful to inform the decisionmaker and the public. The revised draft guidance sets forth a reference point of 25,000 metric tons CO_2-equivalent emissions on an annual basis below which a quantitative analysis of GHG emissions is not recommended unless quantification is easily accomplished, taking into account the availability of quantification tools and appropriate input data. CEQ strongly encourages agencies to use their experience and expertise to determine when a more detailed analysis of GHG emissions will assist with analyzing the environmental impacts or comparing among alternatives and mitigations. When an agency determines that a quantitative analysis is not appropriate, an agency should complete a qualitative analysis and explain its rationale for doing so.

9. NEPA Inefficiencies

Many commenters assert that CEQ's 2010 draft guidance attempted to expand NEPA analyses to include the effects of greenhouse gas emissions. These commenters claim that expanding the scope of NEPA will only serve to exacerbate the delays and inefficiencies they currently perceive in the environmental review and approval process. Until these procedural inefficiencies of NEPA are addressed, these commenters would caution against expanding the reach of the statute. Specifically, some commenters thought that if a quantitative threshold were to be implemented, it would be duplicative of those that other agencies already use in evaluating greenhouse gas emissions under their statutory authorities and that many of the protocols identified in the 2010 draft guidance are unreasonably expensive and difficult to implement. Other commenters argue that the guidance would increase the time and expense of NEPA reviews while also increasing the potential for litigation because the guidance fails to create bright lines and safe harbors for the scope of NEPA reviews. The guidance, in their view, proposes uncertain and unclear standards for both the situations in which NEPA reviews should be conducted on the basis of climate impacts and the scope of climate impacts to be assessed in the NEPA reviews. For instance, they point to the statement in the 2010 draft guidance that the Federal agency's analysis should ''qualitatively discuss the link between [the project's] greenhouse gas emissions and climate change.'' The guidance, according to commenters, however, provides no examples of what this qualitative analysis should involve, even as the CEQ acknowledges the difficulty in understanding the link between an individual facility's emissions and specific climatological changes. Similarly, other commenters said that despite its legislative history and judicial precedent, NEPA has been increasingly abused forcing Federal agencies to spend time and scarce resources defending lawsuits. They claim the NEPA guidance issued by CEQ will only exacerbate this situation, as agencies are ill equipped to address GHG and climate change issues. According to these commenters, real data on climate change is questionable. Moreover, the elements that contribute to greenhouse gas emissions are so integrated into our markets that consideration of all of them as part of the NEPA review could have devastating consequences for every aspect of our economy. The result will, according to commenters, be longer permitting lines, higher project costs, and more litigation. At a time when jobs are scarce and the economy vulnerable, these commenters are concerned that the government is creating new barriers to economic development. These commenters urge CEQ to reconsider this guidance and work with stakeholders in making necessary reforms to NEPA. Reforms such as eliminating delays in the permitting process, allowing for greater public participation and stronger involvement by stakeholders, eliminating excessive litigation, and facilitating better Federal coordination they claim will go a long way to reestablishing the appropriate balance between economic development and environmental preservation.

Other commenters want CEQ to adopt an effective date for the guidance. The commenters noted that the 2010 draft guidance states: ''CEQ does not intend this guidance to become effective until its issuance in final form.'' However, they argue that the 2010 draft guidance does not address how the guidance in final form is to be applied and whether CEQ intends to adopt an effective date. Although they understand that CEQ believes that this guidance merely clarifies what NEPA documents should already include, they say that the guidance explains, for the first time, how agencies are to conduct the analysis for effects of greenhouse gas emissions and climate change. Without a clear effective date, draft documents will be subject to uncertainty, litigation, and delay, even if they include an analysis of climate change impacts. Because the guidance has the potential to cause unnecessary uncertainty, delay, and costs to projects that are well underway, commenters believe that it is critical that CEQ adopt an effective date and clarify that the final guidance only applies to draft NEPA documents issued after the effective date.

Response to Comments:

The revised draft guidance will be effective immediately once finalized for newly proposed actions and is designed to help Federal agencies develop their analyses of GHG emissions and climate change to ensure they are useful. By providing a clearer explanation of what should be disclosed and considered regarding GHG emissions and climate change, this guidance should lessen litigation driven by uncertainty. Finally, this revised draft guidance does not suggest that agencies retrospectively prepare an analysis for decisions already made or projects that are underway.

10. Mitigation, Alternatives, and Miscellaneous Comments

a. Mitigation

i. Types of Mitigation

Several commenters were concerned that the 2010 draft guidance only briefly addresses the need for agencies to consider mitigation measures and reasonable alternatives to reduce action-related greenhouse gas emissions. CEQ was encouraged to significantly strengthen this section. The guidance should concentrate more on ensuring that useful information is provided to decisionmakers regarding alternatives and mitigation measures for actions with significant greenhouse gases, according to these commenters. Many commenters also expressed that the guidance should focus more attention on mitigation than on assessment. Commenters would also like more discussion of the need to analyze mitigation measures. CEQ should accordingly provide Federal agencies with resources on measures to mitigate greenhouse gases. Multiple commenters suggested that if CEQ were to provide and update a list of mitigation measures, the process would be easier for individual agencies to implement. CEQ was encouraged to assist in developing categories of measures that would allow agencies to consider alternatives. Some mitigation measures, commenters noted, particularly offsite mitigation, can be implemented for projects regardless of project type (California, Massachusetts, and New York already do this for their State NEPA-like programs). The commenters urged CEQ to therefore provide a list of both onsite and offsite mitigation measures in categories such as building design and construction and mobile source emissions. One commenter stated that explicit guidance will be needed regarding which greenhouse gas emissions associated with energy use (referenced on the second paragraph on page 5) should be included in the analysis and as potential mitigation. Alternatively, CEQ should consider directing other Federal agencies to take a more direct role in providing technical expertise and guidance for the development of mitigation alternatives, another commenter suggested. Finally, one commenter proposed that NEPA lead agencies should consider not only their own authority or control, but also consequences of actions under the authority of other governmental units that are or could be influenced by information from the Federal agency. In this regard, identification of mitigation that could be considered by other regulatory authorities would also be useful.

Other commenters assert that CEQ should remind agencies of key points in the NEPA process that specifically relate to the identification of alternatives and mitigation measures that reduce greenhouse gas emissions and related effects. One example given was that agencies should perhaps identify greenhouse gas mitigation opportunities during scoping or as a part of the comparison of energy use between alternatives under 40 CFR 1502.16(e).

ii. Discretionary vs. Mandatory Mitigation

Although the 2010 draft guidance proposes that mitigation and reasonable alternatives be considered to reduce action-related greenhouse gas emissions, some commenters believe that CEQ should explicitly acknowledge that adoption of mitigation measures considered under NEPA are not *per se* required, and should not be required under the NEPA statute. Some of these commenters argue that it may not even be possible to mitigate GHGs for projects. One commenter interpreted the language in the guidance to mean that agencies should consider, but are not required to implement, mitigation measures. This commenter suggests that it may be appropriate for CEQ to encourage the implementation of measures to mitigate greenhouse gas impacts resulting from a project when cost-effective and fitting to the nature of the project.

Conversely, other commenters advocate mandatory consideration of mitigation, reasoning that a NEPA process requirement that enforces a mandatory consideration of greenhouse gas emissions would establish an enforceable obligation on agencies to properly evaluate methods to mitigate greenhouse gas emissions. One commenter requests that CEQ clarify that agencies *should* or *must* consider the direct effects of greenhouse gas emissions by ''(1) quantify[ing] cumulative emissions . . . (2) discuss[ing] measures to reduce greenhouse gas emissions . . . and (3) qualitatively discuss[ing] the link between such greenhouse gas emissions and climate change (rather than stating that ''it would be appropriate'' to engage in such analysis).'' Overall, there was confusion among the many commenters on discretionary versus mandatory mitigation, and commenters urged CEQ to clarify this subject in the final guidance.

iii. Carbon Offsets

Commenters interpreted the 2010 draft guidance to infer, but not explicitly identify, carbon offsets as a potential option available to Federal agencies to mitigate GHG emissions. Purchasing and subsequently retiring carbon offsets from third-party verified projects is an established method for mitigating GHG emissions, commenters reason. They envision that carbon offset programs could be integrated into mitigation plans developed through the NEPA process to compensate for GHG emissions associated with Federal agency actions. Including specific reference to carbon offsets in the language of the memorandum, according to these commenters, would help to provide clarification to agencies evaluating possible mitigation alternatives as part of their NEPA analysis requirements.

Other commenters took a more cautious approach to mitigation through carbon offsets. If carbon offsets are allowed for GHG emissions mitigation under NEPA, commenters state that CEQ should provide additional guidance on the criteria they must meet in order to uphold standards for quality. Strict monitoring and public reporting requirements required by carbon offset projects would ensure that Federal greenhouse gas mitigation activities are readily quantifiable and transparent to the public. Although the comments express the possibility that offsets could be external to a Federal agency project, the location of the offset would be important. One comment suggests that the NEPA process require that carbon offsets be achieved only in local markets. For offsets on tribal lands, the offset project should support new or established tribal programs. Another comment recommends against using offsets in place of reductions at the source as a major component of public policy. Similarly, regarding offsite mitigation generally, another commenter requested CEQ to encourage agencies to prioritize onsite mitigation measures that avoid or minimize emissions, while allowing agencies to use offsite measures where onsite mitigation is not available.

iv. Other

Commenters directed CEQ to review the approaches taken by proactive states and nations on mitigation and alternatives before completing the final guidance. Another commenter expressed concerns for funding availability for mitigation, stating that beyond operational and maintenance improvements, current and foreseeable funding levels may curtail greenhouse gas mitigation options, as well as the ability to meaningfully reduce greenhouse gas emissions to target levels. Some commenters believe the guidance should recognize that the effectiveness of many mitigation measures is still difficult to quantify, and that a qualitative discussion would be appropriate where analytical tools are not yet sufficient to estimate reliably greenhouse gas reductions from mitigation measures.

Response to Comments:

The revised draft guidance advises agencies to consider mitigation measures and reasonable alternatives that reduce GHG emissions. By statutes, Executive Orders, and agency policies, the Federal Government is committed to the goals of energy conservation, reducing energy use, eliminating or reducing GHG emissions, and promoting the deployment of renewable energy technologies that are cleaner and more efficient. Agencies whose actions implicate these goals should consider useful and relevant GHG emissions information when deciding among alternatives. Reasonable alternatives that may be considered for their ability to reduce or mitigate GHG emissions include enhanced energy efficiency, lower GHG-emitting technology, increasing the use of renewable energy, planning for carbon capture and carbon sequestration, sustainable land management practices, and capturing or beneficially using fugitive methane emissions. In cases where mitigation measures are designed to address the effect of climate change, the agency's final decision should identify those mitigation measures and the agency should consider adopting an appropriate mitigation monitoring program.

b. Alternatives

Many commenters stated that CEQ should provide better guidance on how Federal agencies must, relative to climate change, ''[r]igorously explore and objectively evaluate all reasonable alternatives'' and specifically ''[i]nclude the alternative of no action.''[35] This duty is critical, according to commenters; operating in concert with NEPA's mandate to address environmental impacts, an agency's fidelity to alternatives analysis allows agencies to ''sharply define the issues and provide a clear basis for choice among options by the decisionmaker and the public.''[36] The commenters stated that CEQ should remind Federal agencies that they are obligated under NEPA to identify, disclose, and analyze the effects of alternatives on climate change, and identify alternatives/mitigation that would lessen or eliminate those effects.

Some commenters also request that CEQ clarify that the alternatives identified are merely suggestions for alternatives to GHG-emitting actions that may be considered if they are reasonable in light of the purpose of the action and other technical and economic factors. Furthermore, CEQ should acknowledge that Federal agencies may evaluate these suggested alternatives as part of a ''no action'' alternative. CEQ should also clarify, according to these commenters, that the reasonably foreseeable future condition of the affected environment (discussed on the third paragraph of page 7) should be discussed in the no action alternative. One commenter opined that the language in the third paragraph of page 9 (''all possible approaches to a particular project which would alter the environmental impact and the cost-benefit balance'') is too strong, and that the alternatives considered do not have to be exhaustive. The commenter wrote that NEPA requires only the consideration of reasonable alternatives, not all alternatives. A commenter raised the concern that if an action creates beneficial effects such that a quantifiable benefit toward reducing GHGs is produced, this could conceivably make the no action alternative (continuing not to offset carbon-based generation) have a significant negative comparative effect.

Since NEPA should help Federal agencies understand options that no one officer or official is likely to know offhand, some commenters recommended that a list or category of alternative measures, mitigation measures, or even legal duties and other reasons for choosing the no action alternative should be developed under CEQ's convening authority for this guidance and its agency-specific progeny. Commenters urge that with every decision, Federal agencies should address: (1) Whether direct GHG emissions can be reduced; (2) whether indirect or cumulative greenhouse gas emissions can be reduced via, *e.g.,* improved efficiency of operations; (3) whether an agency can take action which protects and restores the resiliency of the environment to provide a means of best withstanding climate change impacts; and (4) whether the reality of climate change warrants a very different management focus for the agency, or, at the least, warrants a decision not to take a particular action. Before recommending an alternative, the Federal action agency should, according to these commenters, clearly identify the likely effects its decision will have on net production of GHG emissions. Another commenter encourages CEQ to require agencies to explain the reasons for rejecting alternatives that would produce fewer GHG emissions. One commenter recommended that CEQ should enumerate the indicators an agency should use when the agency determines it will quantify GHG emissions. Specifically, if the agency identifies alternatives with significantly lower GHG emission potential, including the ''no action'' alternative, then all alternatives should be an indicator that the agency and the public may benefit from a quantification of GHG emissions. Some argue that CEQ should avoid any policy that would allow qualitative consideration of GHG emissions where there are more than *de minimis* differences in GHG emissions between alternatives.

Other commenters propose that agencies should be directed to look at the relative percentage of improvements an alternative could produce compared to the baseline carbon performance. To accurately identify alternatives that will best mitigate climate change effects, agencies should set an accurate baseline that will allow for a fact-based comparison of alternatives' effects and the value of mitigation. CEQ guidance should then, according to these commenters, specifically require that the ''no action'' alternative analysis project and evaluate climate change impacts on resources over time and evaluate the effects of the proposed action, as well as the efficacy of mitigation measures, against that changing baseline. A commenter notes that the relative percentage of greenhouse gas emissions reductions an alternative could produce could be compared to the baseline carbon performance regardless of absolute magnitude of emissions.

Response to Comments:

Consideration of a range of reasonable alternatives is fundamental to the NEPA process, and is meant to ensure that agencies have the opportunity to make the best informed, and potentially most beneficial, decision. NEPA currently provides agencies with the ability to consider appropriate project alternatives and their impacts, including the consideration of GHG emissions and climate change impacts. The revised

[35] *See* 40 CFR 1502.14(a), (d).

[36] *Id.*

draft guidance preserves agency discretion in scoping, analyzing, and considering alternatives in NEPA review and the tradeoff considerations involved, including changes in emissions, based on the differing effects of those alternatives. If a comparison of alternatives based on GHG emissions, and any potential mitigation measures to reduce emissions, would be useful to advance a reasoned choice among alternatives and mitigations, then an agency should compare the levels of GHG emissions caused by each alternative—including the no-action alternative—and mitigations to provide information to the public and decisionmaker.

c. Miscellaneous Comments

i. The Definition of a Greenhouse Gas

Commenters requested that the definition of GHGs be altered. Multiple commenters requested that an all-encompassing definition of climate forcing agents or precursor emissions be added to the guidance, including but not limited to black carbon, not just the six GHGs defined in Executive Order 13514. Some commenters recommended that the GHG definition should be expanded such that Federal agencies evaluate all GHGs and precursor emissions associated with the wide range of activities undertaken or authorized by the Federal government, including but not limited to construction, electricity use, fossil fuel use, downstream combustion of fossil fuels extracted or refined by the project, water consumption, water pollution, waste disposal, transportation, the manufacture of building materials, land conversion, agriculture, logging and other forestry practices, and livestock grazing. Another commenter stated that the CEQ guidance should make clear that at least the six GHGs are covered by NEPA, but to leave open the possibility that additional GHGs may need to be addressed in the future, depending on the action and current state of scientific knowledge. One commenter advised that the CEQ guidance should be revised to recognize that the six GHGs vary in importance depending on the project type and agency activity and to clarify that not all six of the GHGs need to be analyzed for all projects.

Response to Comments:

This revised draft guidance includes a definition of GHGs in accordance with Section 19(i) of Executive Order 13514 (*i.e.,* carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride). The guidance does not preclude consideration of additional gases or particulates, or the reduction of particular emissions such as methane, if that information would be useful to the decisionmaker and the public in considering and advancing a reasoned choice among alternatives and mitigations.

ii. Environmental Justice/Vulnerable Communities & Ecosystems

Some commenters emphasized that specific environmental justice guidance in the context of climate change is warranted. These commenters believe that the agency consideration of climate change impacts on vulnerable communities should be required, rather than advisory. Other commenters assert that Federal agencies responsible for making resource decisions on or near tribal lands should have explicit guidance regarding how to weigh the impacts of their decisions on indigenous cultural and spiritual ''resources'' in the context of an environment changing due to climate change. Another commenter reminded CEQ of its responsibilities to consult with Native American tribes, and responsibilities under Executive Order 12898, which established ''the Environmental Justice Doctrine.'' One commenter claims that ''vulnerability'' is a vaguely defined term and explanations of the statutory authorities that justify regulations remain unexplained; thereby making consideration of impacts on so-called vulnerable species and ecosystems suspect.

Response to Comments:

The revised draft guidance advises agencies to consider the particular impacts of climate change on vulnerable communities where this may affect the design of the action or the selection among alternatives and mitigations. Tribal and Alaska Native communities that maintain their close relationship with the cycles of nature have observed the changes that are already underway, including the melting of permafrost in Alaska, disappearance of important species of trees, shifting migration patterns of elk and fish, and the drying of lakes and rivers. These climate impacts affect the survival of these groups and their members in terms of both their livelihood and their culture. Consequently, agencies should be cognizant of the evolving policies and information relevant to such changes when those changes are important to the alternatives and mitigation determinations at hand.

iii. Transportation Concerns

Transportation agency commenters expressed the possible difficulties that might occur in the application of the guidance. Quantifying cumulative emissions over the life of alternatives for highway projects may prove difficult for projects that are based on a 20-year traffic analysis, according to commenters. Some commenters stated that because the majority of transportation projects do not increase vehicle miles traveled, they do not generate increased GHG emissions. Conversely, other commenters strongly contend that projects with major sources of indirect emissions—most notably electricity consumption and vehicle miles traveled—should be included in the guidance. Analyzing most individual transportation projects will thus result in the expenditure of scarce transportation funds with no benefit realized, according to commenters. Additionally, a commenter added that it is likely that the bulk of text in a NEPA document would actually be explaining the assumptions and uncertainties involved in the analysis, rather than the analysis itself. Therefore, the commenter questioned whether results would provide meaningful information that is reliable enough to inform a decision between alternatives for a specific project. Another comment stated that because of large categorically excluded actions, simply having to determine whether the projects exceed the threshold in the guidance may significantly delay project delivery while offering little program benefit, and would be inconsistent with the approach to categorical exclusions.

One transportation commenter reported that many transportation agencies currently estimate CO_2, methane (CH_4), and nitrous oxide (N_2O), and that forcing these agencies to estimate the additional three GHGs would pose a burden with little additional value. Transportation project analysts, according to these comments, will be required to adapt or develop methods to apply the guidance. This commenter also noted that none of the methods of assessing GHG emissions described in the 2010 draft guidance appear to be applicable to transportation projects. Multiple transportation commenters recommend that, as an alternative, CEQ provide additional guidance for transportation sources in the final guidance. One comment also requested additional instruction and collaboration with Federal agencies on particular projects and on agency implementation procedures.

Response to Comments:

The revised draft guidance states that agencies must consider direct, indirect, and cumulative effects when analyzing major Federal actions, regardless of the sector—such as transportation—

proposing the action under consideration. Agencies addressing transportation-related actions should, in accordance with the proposed guidance, develop the scope of a particular NEPA analysis using NEPA's ''rule of reason'' which allows the analysis to be tailored to the specific proposal to take into account any particular characteristics of the sector involved, and ensures that the level of effort expended in analyzing GHG emissions or climate change effects is reasonably proportionate to the importance of climate change related considerations to the agency action under evaluation. Agencies also have the ability to draw from their experience and expertise to determine which planning level—the broad programmatic level or the project- or site-specific level—is better suited for addressing GHG emissions and climate change impacts. Furthermore, agencies have the discretion to perform quantitative or qualitative analyses, whichever is more appropriate, as long as they document the rationale behind choosing one form of analysis over the other.

iv. Carbon Sinks

Some commenters indicated that guidance for comprehensive consideration of climate change impacts under NEPA should include an analysis of both GHG emissions and any changes to the environmental capacity to mitigate additional emissions (*e.g.,* estimated inventory of losses and gains to local carbon sequestration capacity), as this would likely inform the analysis of the cumulative impacts of a proposed action and its alternatives. Commenters suggested that CEQ direct agencies to analyze and disclose any emissions, degradation, or reduction of sequestration or carbon sinks regardless of the level of emissions or loss of sequestration. Commenters stated that agencies must document the steps they plan to take to avoid, minimize or mitigate greenhouse gas emissions or damage to carbon sinks. Where the 2010 draft guidance discusses Federal policies relevant to determining when to evaluate greenhouse gas emissions (pages 3–4), and the factors that agencies should consider as part of their greenhouse gas evaluation (pages 4–6), these commenters propose that the project agency should also be expected to consider local, regional, and statewide plans to control greenhouse gas emissions and related planning documents that describe or evaluate sources and carbon sinks that could contribute to the cumulative effect of the project (consistent with CEQ's existing regulations for evaluating the environmental consequences of an agency's action in light of existing land use plans, policies, and controls, in accordance with 40 CFR 1502.16(c)).

Response to Comments:

The revised draft guidance reiterates that agencies should consider the direct, indirect, and cumulative effects of GHG emissions potentially resulting from their proposed actions, as is required for any other environmental stressor under NEPA. It also states that agencies should take into account the expected effects of GHG emissions resulting from all phases and components over the life of a project, including short- and long-term adverse and beneficial effects. The guidance specifically recognizes that land and resource management actions are unique since they can produce carbon emissions and contribute to carbon sequestration. Agencies should thus analyze the net GHG emissions and climate change effects in light of the quantity of emissions and carbon sequestration potential, and any other factors particular to a proposed land and resource management action that would inform the decision-making process and aid in distinguishing between reasonable alternatives and potential mitigation measures. Agencies have the discretion to determine the type (quantitative or qualitative) and level (broad programmatic or project- or site-specific) of analysis that is more appropriate, and the analysis should be proportional to the amount of GHG emissions projected. In addition, agencies are encouraged to frame their analyses of the effects of GHG emissions and climate change within the context of agency, state, and local emissions reduction goals if it provides useful information to the decisionmaker and the public. Lastly, agencies should incorporate by reference any management plans, inventories, assessments, and research related to potential changes in carbon stocks.

v. Energy

A commenter requests that CEQ clarify which kinds of Federal projects ''implicate'' the goals of energy conservation, reducing energy use, eliminating or reducing greenhouse gas emissions, and promoting renewable energy technology. CEQ should provide, according to a commenter, guidance regarding analysis of the efficiency and propriety of the different types of energy projects by conducting evaluations of Energy Return on Energy Invested (''EROEI''). Another commenter offered that while in many cases the adoption of low emissions technologies can augment the power consumption needs and partially reduce the greenhouse gas emissions component, the need for constant reliable large base load energy supply may make total reliance on low emitting technologies infeasible at the present time. Additionally, another commenter suggested that while an agency may spend time determining the emissions from a gas or oil development project on Federal lands, and may even decide against continued authorization of the project if the projected impact on climate change is deemed too great, in the absence of that domestic development the energy will simply be replaced by energy from another part of the country or overseas, resulting in the same net effect. Ultimately, the net effect of restricting domestic oil and gas extraction and production may actually be increased global greenhouse gases.

Comments suggest that Federal agencies should engage their long-range energy and resource management programs with four goals in mind, consistent with NEPA's purpose and goals: (1) Reducing if not eliminating greenhouse gas emissions, taking advantage of opportunities to reduce greenhouse gas emissions sources and use greenhouse gas emissions sinks; (2) assisting our transition from dirty fossil fuels to the responsible and efficient use of renewable energy; (3) addressing the efficiency and full life-cycle impacts of energy-related projects by, for example, evaluating and improving upon EROEI; and (4) protecting and restoring the resiliency of our communities and environment to best withstand climate change impacts.

Several commenters requested that CEQ should establish exemptions or ''pre-clear'' certain actions from any disclosure threshold, in an effort to advance energy goals. Major Federal actions that stem from exceptional Federal assistance (*e.g.,* stimulus funding) and major Federal actions that sequester greenhouse gas emissions and/or improve energy efficiency and/or meet Federal or state performance criteria were proposed for exemption. A commenter asks CEQ to distinguish between fossil-fuel based and other anthropogenic emissions of CO_2 versus renewable or biogenic emissions of CO_2. Another commenter requests CEQ to advise lead agencies that biogenic CO_2 emissions exert no net adverse impact on the environment. Several commenters urge CEQ to discuss hydropower as a positive force in offsetting carbon emissions and a major component of carbon avoidance in producing electricity.

Response to Comments:

The revised draft guidance notes that NEPA requires Federal agencies to recognize the global character of environmental problems and lend support to initiatives, resolutions, and programs designed to address those problems. In addition, by statutes, Executive Orders, and agency policies, the Federal government is committed to the goals of energy conservation, reducing energy use, eliminating or reducing GHG emissions, and promoting the deployment of renewable energy technologies that are cleaner and more efficient. Where a proposal for Federal agency action implicates such goals, information on GHG emissions (qualitative or quantitative) that is useful and relevant to the decision should be used when deciding among alternatives and mitigations. The agency's ''responsibility is not simply to sit back, like an umpire, and resolve adversary contentions . . . Rather, it must itself take the initiative of considering environmental values at every distinctive and comprehensive stage of the process beyond the staff's evaluation and recommendation.'' [37] Regarding the establishment of a *de minimis* threshold, the revised draft guidance sets forth a reference point of 25,000 metric tons CO_2-equivalent emissions on an annual basis below which a quantitative analysis of GHG emissions is not warranted unless quantification below that reference point is easily accomplished taking into account the availability of quantification tools and appropriate input data. CEQ strongly encourages agencies to use their experience and expertise to determine when a more detailed analysis of GHG emissions will assist with analyzing the environmental impacts or comparing among alternatives and mitigations. When an agency determines that a quantitative analysis is not appropriate, an agency should complete a qualitative analysis and explain its basis for doing so. Finally, the revised draft guidance specifically provides special considerations for biogenic sources of GHG emissions from land management actions and instructs agencies on how to account for GHG emissions, carbon sequestration potential, and the change in carbon stocks that are relevant to decision-making in light of the actions proposed and the timeframes under consideration. It also recognizes that such analyses may be more appropriately conducted on a broad programmatic or landscape-scale level that could be tiered to when performing project-specific analyses.

[37] *Calvert Cliffs Coordinating Comm., Inc.* v. *US Atomic Energy Comm'n,* 449 F.2d 1109, 1119 (D.C. Cir. 1971).

The Revised Draft Guidance

CEQ issues the following Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews. The guidance is provided here and is available on the CEQ Web site at *www.whitehouse.gov/administration/eop/ceq/initiatives/nepa.*

(Authority: 42 U.S.C. 4332, 4342, 4344 and 40 CFR parts 1500, 1501, 1502, 1503, 1505, 1506, 1507, and 1508)

Dated: December 18, 2014.

Brenda Mallory,

General Counsel, Council on Environmental Quality.

The Guidance

I. Introduction

The Council on Environmental Quality (CEQ) issues this guidance to provide Federal agencies direction on when and how to consider the effects of greenhouse gas (GHG) emissions [1] and climate change in their evaluation of all proposed Federal actions [2] in accordance with the National Environmental Policy Act (NEPA) and the CEQ Regulations Implementing the Procedural Provisions of NEPA (CEQ Regulations).[3] The guidance will facilitate compliance with existing legal requirements under NEPA, thereby improving the efficiency and consistency of reviews of proposed Federal actions for agencies, decisionmakers, project proponents, and the interested public.[4] This guidance is designed to encourage consistency in the approach Federal agencies employ when assessing their proposed actions, while also recognizing and accommodating a particular agency's unique circumstances.

Overall, this guidance is designed to provide for better and more informed Federal decisions regarding GHG emissions and effects of climate change consistent with existing NEPA principles. Climate change is a particularly complex challenge given its global nature and inherent interrelationships among its sources, causation, mechanisms of action, and impacts; however, analyzing the proposed action's climate impacts and the effects of climate change relevant to the proposed action's environmental outcomes can provide useful information to decisionmakers and the public and should be very similar to considering the impacts of other environmental stressors under NEPA. Climate change is a fundamental environmental issue, and the relation of Federal actions to it falls squarely within NEPA's focus.[5] Focused and effective consideration of climate change in NEPA reviews [6] will allow agencies to improve the quality of their decisions. Environmental outcomes will be improved by identifying important interactions between a changing climate and the environmental impacts from a proposed action, and can contribute to safeguarding Federal infrastructure against the effects of extreme weather events and other climate related impacts.

Agencies meet their NEPA responsibilities using a Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS). This guidance will help Federal agencies ensure their analyses of GHG emissions and climate change in an EA or an EIS are useful by focusing on assessing those proposed actions that involve emissions, or that have a long lifespan such that a changing climate may alter the environmental consequences associated with the proposed action. CEQ expects that agencies will continue to consider potential GHG emissions and climate impacts when applying an existing CE

[1] For purposes of this guidance, CEQ defines GHGs in accordance with Section 19(i) of Executive Order 13514 (carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride). Also for purposes of this guidance, ''emissions'' includes release of stored GHGs as a result of destruction of natural GHG sinks such as forests and coastal wetlands, as well as future sequestration capability. The common unit of measurement for GHGs is metric tons of CO_2 equivalent (mt CO_2-e). ''Tons'' in this guidance generally refers to mt CO_2-e.

[2] The CEQ 2010 draft guidance had carved out the question of how land and resource management actions should be considered in NEPA reviews. That distinction is no longer retained.

[3] 42 U.S.C. 4321 *et seq.;* 40 CFR parts 1500–1508.

[4] This guidance is not a rule or regulation, and the recommendations it contains may not apply to a particular situation based upon the individual facts and circumstances. This guidance does not change or substitute for any law, regulation, or other legally binding requirement, and is not legally enforceable. The use of non-mandatory language such as ''guidance,'' ''recommend,'' ''may,'' ''should,'' and ''can,'' is intended to describe CEQ policies and recommendations. The use of mandatory terminology such as ''must'' and ''required'' is intended to describe controlling requirements under the terms of NEPA and the CEQ regulations, but this document does not establish legally binding requirements in and of itself.

[5] NEPA recognizes ''the profound impact of man's activity on the interrelations of all components of the natural environment.'' (42 U.S.C. 4331). It was enacted to, *inter alia,* ''promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.'' (42 U.S.C. 4321).

[6] The term ''NEPA review'' is used to include analysis, process, and documentation. While this document focuses on NEPA reviews, agencies are encouraged to analyze greenhouse gas emissions early in the planning and development of proposed projects.

or when establishing a new CE.[7] The analysis in an EA or EIS should be proportionate to the effects of the proposed action. More consistent and appropriately proportioned NEPA reviews can help agencies minimize controversy, thereby avoiding potential project delays. This guidance should also reduce the risk of litigation driven by uncertainty in the assessment process as it will provide a clearer expectation of what agencies should consider and disclose.

Agencies should consider the following when addressing climate change:

(1) The potential effects of a proposed action on climate change as indicated by its GHG emissions; and

(2) the implications of climate change for the environmental effects of a proposed action.

Agencies continue to have substantial discretion in how they tailor their NEPA processes to accommodate the concerns raised in this guidance, consistent with the CEQ Regulations and their respective implementing regulations and policies, so long as they provide the public and decisionmakers with explanations of the bases for their determinations. This approach is on par with the consideration of any other environmental effects and this guidance is designed to be implemented without requiring agencies to develop new NEPA implementing procedures. CEQ recommends that when agencies conduct their usual review of their NEPA implementing policies and procedures, they then make any updates they deem necessary or appropriate to facilitate their consideration of GHG emissions and climate change.

This guidance also reviews the application of other routine and fundamental NEPA principles and practices to the analysis of GHG emissions and climate change. This guidance:

- Discusses direct, indirect, and cumulative impacts analysis of a proposed action's reasonably foreseeable emissions and effects;
- Highlights the consideration of reasonable alternatives and points to the need to consider the short-term and long-term effects and benefits in the alternatives analysis and mitigation to lower emissions;
- Recommends that agencies use a reference point to determine when GHG emissions warrant a quantitative analysis taking into account available GHG quantification tools and data that are appropriate for proposed agency actions;
- Recommends that an agency select the appropriate level of action for NEPA review at which to assess the effects of GHG emissions and climate change, either at a broad programmatic or landscape-scale level or at a project- or site-specific level, and that the agency set forth a reasoned explanation for its approach;
- Counsels agencies to use the information developed during the NEPA review to consider alternatives that are more resilient to the effects of a changing climate; and
- Advises agencies to use existing information and tools when assessing future proposed actions, and provides examples of some existing sources of scientific information.

Agencies should apply this guidance to the NEPA review of new proposed agency actions moving forward and, to the extent practicable, to build its concepts into on-going reviews.

II. Background

A. NEPA Fundamentals

NEPA is designed to promote disclosure and consideration of potential environmental effects on the human environment[8] resulting from proposed actions, and to provide decisionmakers with alternatives to mitigate these effects. NEPA ensures that agencies take account of environmental effects as an integral part of the agency's own decision-making process before decisions are made. It informs decisionmakers by ensuring agencies consider environmental consequences as they decide whether to proceed with a proposed action and, if so, how to take appropriate steps to eliminate or mitigate adverse effects. NEPA also informs the public, promoting transparency of and accountability for consideration of significant environmental effects. A better decision, rather than better—or even excellent—paperwork is the goal of such analysis.[9]

Inherent in NEPA and the CEQ Regulations is a rule of reason which ensures that agencies are afforded the discretion, based on their expertise and experience, to determine whether and to what extent to prepare an analysis based on the availability of information, the usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences.[10] It is essential, however, that Federal agencies not rely on boilerplate text to avoid meaningful analysis, including consideration of alternatives or mitigation.[11]

B. Climate Change

The science of climate change is evolving, and is briefly summarized here to illustrate the sources of scientific information that are presently available for consideration. CEQ's first Annual Report in 1970 discussed climate change, concluding that ''[m]an may be changing his weather.'' [12] At that time, the mean level of atmospheric carbon dioxide had been elevated to 325 parts per million (ppm). Since 1970, the concentration of atmospheric carbon dioxide has increased at a rate of about 1.6 ppm per year (1970–2012) to approximately 395 ppm in 2014 (current globally averaged value).[13]

It is now well established that rising global atmospheric GHG emission concentrations are significantly affecting the Earth's climate. These conclusions are built upon a scientific record that has been created with substantial contributions from the United States Global Change Research Program (USGCRP), formerly the Climate Change Science Program, which informs our response to climate and global change through coordinated Federal programs of research, education, communication, and decision support.[14] Studies have projected the effects of increasing GHGs on water availability, ocean acidity, sea-

[7] CEQ Memorandum to Heads of Federal Agencies, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act,* November 23, 2010, *available at https://ceq.doe.gov/ceq_regulations/NEPA_CE_Guidance_Nov232010.pdf.*

[8] 40 CFR 1508.14 (''Human environment'' shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment).

[9] 40 CFR 1500.1(c).

[10] *See e.g., Idaho Conservation League* v. *Mumma,* 956 F.2d 1508, 1519 (9th Cir. 1992).

[11] 40 CFR 1500.2, 1502.2. For example, providing a paragraph that simply asserts, without qualitative or quantitative assessment, that the emissions from a particular proposed action represent only a small fraction of local, national, or international emissions or are otherwise immaterial is not helpful to the decisionmaker or public.

[12] Environmental Quality: The First Annual Report at 93.

[13] *See* U.S. Department of Commerce, National Oceanic and Atmospheric Administration Earth Systems Research Laboratory, *available at http://www.esrl.noaa.gov/gmd/ccgg/trends/global.html.*

[14] Public Law 101–606. For additional information on the Global Change Research Program, go to *http://www.globalchange.gov.* USGCRP coordinates and integrates the activities of 13 Federal agencies that conduct research on changes in the global environment and their implications for society. USGCRP began as a Presidential initiative in 1989 and was codified in the Global Change Research Act of 1990 (Pub. L. 101–606). USGCRP-participating agencies are the Departments of Agriculture, Commerce, Defense, Energy, Interior, Health and Human Services, State, and Transportation; the U.S. Agency for International Development, the Environmental Protection Agency, the National Aeronautics and Space Administration, the National Science Foundation, and the Smithsonian Institution.

level rise, ecosystems, energy production, agriculture and food security, and human health.[15]

Based primarily on the scientific assessments of the USGCRP and the National Research Council, the Environmental Protection Agency (EPA) has issued a finding that the changes in our climate caused by increased concentrations of atmospheric GHG emissions endanger public health and welfare.[16] Adverse health effects and other impacts caused by elevated atmospheric concentrations of GHGs occur via climate change.[17] Broadly stated, the effects of climate change observed to date and projected to occur in the future include more frequent and intense heat waves, more severe wildfires, degraded air quality, more heavy downpours and flooding, increased drought, greater sea-level rise, more intense storms, harm to water resources, harm to agriculture, and harm to wildlife and ecosystems.[18]

III. Considering the Effects of Ghg Emissions and Climate Change

This guidance is applicable to all Federal proposed actions, including individual Federal site-specific actions, Federal grants for or funding of small-scale or broad-scale activities, Federal rulemaking actions, and Federal land and resource management decisions.[19] Federal agencies, to remain consistent with NEPA, should consider the extent to which a proposed action and its reasonable alternatives contribute to climate change through GHG emissions and take into account the ways in which a changing climate over the life of the proposed project may alter the overall environmental implications of such actions.

A. Considering the Impacts of the Proposed Action

In light of the difficulties in attributing specific climate impacts to individual projects, CEQ recommends agencies use the projected GHG emissions and also, when appropriate, potential changes in carbon sequestration and storage, as the proxy for assessing a proposed action's potential climate change impacts.[20] This approach allows an agency to present the environmental impacts of the proposed action in clear terms and with sufficient information to make a reasoned choice between the no-action and proposed alternatives and mitigations, and ensure the professional and scientific integrity of the discussion and analysis.[21]

CEQ recognizes that many agency NEPA analyses to date have concluded that GHG emissions from an individual agency action will have small, if any, potential climate change effects. Government action occurs incrementally, program-by-program and step-by-step, and climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions, including decisions made by the government.[22] Therefore, the statement that emissions from a government action or approval represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether to consider climate impacts under NEPA. Moreover, these comparisons are not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations. This approach does not reveal anything beyond the nature of the climate change challenge itself: The fact that diverse individual sources of emissions each make relatively small additions to global atmospheric GHG concentrations that collectively have huge impact.

In addressing GHG emissions, agencies should be guided by the principle that the extent of the analysis should be commensurate with the quantity of projected GHG emissions. This concept of proportionality is grounded in the fundamental purpose of NEPA to concentrate on matters that are truly important to making a decision on the proposed action.[23] When an agency determines that evaluating the effects of GHG emissions from a proposed Federal action would not be useful to the decision-making process and the public to distinguish between the no-action and proposed alternatives and mitigations, the agency should document the rationale for that determination.

Agencies are required to consider direct, indirect, and cumulative effects when analyzing any proposed Federal actions and projecting their environmental consequences.[24] When assessing the potential significance of the climate change impacts of their proposed actions, agencies should consider both context and intensity, as they do for all other impacts.[25]

When assessing direct and indirect climate change effects, agencies should take account of the proposed action—including ''connected'' actions [26]—

[15] U.S. Global Change Research Program, Climate Change Impacts in the United States: The Third National Climate Assessment (Jerry M. Melillo, Terese (T.C.) Richmond, and Gary W. Yohe eds.) (2014) [hereinafter Third National Climate Assessment], *available at http://nca2014.globalchange.gov;* Fifth Assessment Report, Intergovernmental Panel on Climate Change, 2014, *available at http://www.ipcc.ch/report/ar5/index.shtml;* see also *www.globalchange.gov.*

[16] Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 FR 66496 (Dec. 15, 2009). *See also* Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units, 79 FR 1429–1519 (Jan. 8, 2014).

[17] 74 FR 66497–98 (For example, ''[t]he evidence concerning how human-induced climate change may alter extreme weather events also clearly supports a finding of endangerment, given the serious adverse impacts that can result from such events and the increase in risk, even if small, of the occurrence and intensity of events such as hurricanes and floods. Additionally, public health is expected to be adversely affected by an increase in the severity of coastal storm events due to rising sea levels.'').

[18] *See www.globalchange.gov/climate-change/impacts-society.*

[19] 40 CFR 1508.18 (Federal actions that require a NEPA evaluation include policies, plans, programs, and specific projects. They do not include bringing judicial or administrative civil or criminal enforcement actions. They also do not include actions over which the agency has no discretion or control such as ministerial actions carrying out the direction of Congress or funding assistance solely in the form of general revenue sharing with no Federal agency control over the subsequent use of the funds.).

[20] 40 CFR 1502.16, 1508.9 (providing that environmental impact statements and environmental assessments must succinctly describe the environmental impacts on the area(s) to be affected or created by the alternatives under consideration). This guidance only addresses analyzing the impacts of GHG emissions and climate change under NEPA.

[21] 40 CFR 1500.1, 1502.24 (requiring agencies to use high quality information and ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

[22] *See Massachusetts* v. *EPA,* 549 U.S. 497, 523–25, (2007) (''Agencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed.'').

[23] 40 CFR 1500.1(b).

[24] 40 CFR 1508.7 and 8 (stating that: (1) NEPA analyses shall consider direct and indirect effects and cumulative impacts; (2) indirect effects include reasonably foreseeable future actions such as induced growth and its effects on air and water and other natural systems; and (3) cumulative impacts consider the incremental addition to other past, present, and reasonably foreseeable future actions. This NEPA requirement applies to all proposed actions and calls for the disclosure of the full range of effects that flow from the action, regardless of the ability to control or regulate those effects.). See also, 52 FR 22517 (Jun. 12, 1987) (''The scope of analysis issue addresses the extent to which the proposed action is identified as a federal action for purposes of compliance with NEPA. . . . Once the scope of analysis is determined, the agency must then assess the direct, indirect and cumulative effects of the proposed federal action.'').

[25] 40 CFR 1508.27(a), 1508.27(b) (context is the situation in which something happens, and which gives it meaning; intensity is the severity of impact).

[26] 40 CFR 1508.25 (actions are connected if they: Automatically trigger other actions which may

Continued

subject to reasonable limits based on feasibility and practicality. In addition, emissions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate for the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions) should be accounted for in the NEPA analysis.[27]

After identifying and considering the direct and indirect effects, an agency must consider the cumulative impacts of its proposed action and reasonable alternatives.[28] CEQ does not expect that an EIS would be required based on cumulative impacts of GHG emissions alone. In the context of GHG emissions, there may remain a concern that an EIS would be required for any emissions because of the global significance of aggregated GHG emissions. ''Cumulative impact'' is defined in the CEQ Regulations as the ''impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-federal) or person undertakes such other actions.''[29] Consequently, agencies need to consider whether the reasonably foreseeable incremental addition of emissions from the proposed action, when added to the emissions of other relevant actions, is significant when determining whether GHG emissions are a basis for requiring preparation of an EIS.

Agencies can rely on basic NEPA principles to determine and explain reasonable temporal and spatial parameters of their analyses to disclose the reasonably foreseeable effects that may result from their proposed actions.[30] For example, a particular NEPA analysis for a proposed open pit mine could include the reasonably foreseeable effects of various components of the mining process, such as clearing land for the extraction, building access roads, transporting the extracted resource, refining or processing the resource, and using the resource. Depending on the relationship between any of the discrete elements in the process, as well as the authority under which such elements may be carried out, the analytical scope that best informs decision-making may be to treat these elements as the direct and indirect effects of phases of a single proposed action.

Furthermore, agencies should take into account both the short- and long-term effects and benefits based on what the agency determines is the life of a project and the duration of the generation of emissions. For example, development of a coal resource on Tribal trust lands (requiring the approval of a lease by the Bureau of Indian Affairs), or approval of solar energy development zones may offer important short-term socioeconomic benefits to a particular community or region at the same time that the development produces GHG emissions with potential long-term climate change impacts. Similarly, a prescribed burn of forest or grasslands conducted to limit ecosystem destruction through wildfires or insect infestations may result in short-term GHG emissions and loss of stored carbon at the same time that a restored, healthy ecosystem provides long-term carbon sequestration.

It is important to recognize that land management practices such as prescribed burning, timber stand improvements, fuel load reductions, scheduled harvesting, and grazing land management can result in both carbon emissions and carbon sequestration. Biogenic sources of carbon emissions from land management activities such as vegetation management in the form of prescribed burning, timber stand improvements and fuel load reductions present some unique considerations that are not included in fossil fuel source analyses and an agency's evaluation should reflect these unique considerations.

For such vegetation management practices, NEPA analyses should include a comparison of net GHG emissions and carbon stock changes that would occur with and without implementation of the anticipated vegetation management practice. The analysis should take into account the GHG emissions (biogenic and fossil), carbon sequestration potential, and the net change in carbon stocks that are relevant in light of the proposed actions and time-frames under consideration. In some cases, analysis of climate impacts and GHG emissions have been considered during larger scale analysis supporting policy or programmatic decisions. In such cases, calculating GHG emissions and carbon stocks when implementing specific projects (*e.g.,* a proposed vegetation management activity) may provide information of limited utility for decision makers and the public to distinguish between alternatives and mitigations. Rather, as appropriate, these NEPA analyses can incorporate by reference earlier programmatic studies or information such as management plans, inventories, assessments, and research that consider potential changes in carbon stocks, as well as any relevant programmatic NEPA reviews (see discussion in section III.C below).

Finally, when discussing GHG emissions, as for all environmental impacts, it can be helpful to provide the decisionmaker and the public with a frame of reference. To provide a frame of reference, agencies can incorporate by reference applicable agency emissions targets such as applicable Federal, state, tribal, or local goals for GHG emission reductions to provide a frame of reference and make it clear whether the emissions being discussed are consistent with such goals.[31] For example, Bureau of Land Management projects in California, especially joint projects with the State, look at how the agency action will help or hurt California in reaching its emission reduction goals under the State's Assembly Bill 32 (Global Warming Solutions Act), which helps frame the context for the BLM NEPA analysis.

B. Emissions Analyses

Agencies should be guided by a ''rule of reason'' in ensuring that the level of effort expended in analyzing GHG emissions or climate change effects is reasonably proportionate to the importance of climate change related considerations to the agency action being evaluated. This concept of proportionality is grounded in the fundamental purpose of NEPA to concentrate on matters that are truly significant to the proposed action.[32] An agency must present the environmental impacts of the proposed action in clear terms and with sufficient information to ensure the professional and scientific integrity of the discussion and analysis.[33]

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require environmental impact statements; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification).

[27] 40 CFR 1508.8.

[28] CEQ Memorandum to Heads of Federal Agencies, *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis,* June 24, 2005, *available at https://ceq.doe.gov/nepa/regs/Guidance_on_CE.pdf.*

[29] 40 CFR 1508.7.

[30] *See* 40 CFR 1502.16, 1508.9(b); *see also* Considering Cumulative Effects Under the National Environmental Policy Act, CEQ, January 1997, *available at https://ceq.doe.gov/publications/cumulative_effects.html.*

[31] *See* 40 CFR 1502.16(c), 1506.2(d). For example, see Executive Order 13514, October 5, 2009, 74 FR 52117, *available at www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf.* The Executive Order defines scope 1, 2, and 3 emissions which are typically separate and distinct from analyses and information used in an EA or EIS.

[32] 40 CFR 1500.4(b), 1500.4(g) and 1501.7.

[33] 40 CFR 1502.24 (requiring agencies to ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

An agency's determination regarding the type of analysis—quantitative or qualitative—to be prepared for any proposed action should also be informed by the tools and information available to conduct the analysis. GHG estimation tools have become widely available, and are already in broad use not only in the Federal sector, but also in the private sector, by State and local governments, and globally. If tools or methodologies are available to provide the public and the decision-making process with information that is useful to distinguishing between the no-action and proposed alternatives and mitigations, then agencies should conduct and disclose quantitative estimates of GHG emissions and sequestration. For example, tools exist that can provide estimates of GHG emissions and sequestration for many of the sources and sinks potentially affected by proposed land and resource management actions.[34] Tools have been developed to assist institutions, organizations, agencies, and companies with different levels of technical sophistication, data availability, and GHG source profiles. These widely available tools address GHG emissions, including emissions from fossil fuel combustion and other activities. They also typically provide a choice of methods so that agencies can, for example, devote more time and effort to large sources while achieving efficient coverage for smaller sources. When considering tool options, it is important to consider the size of the project, spatial and temporal scale, and the availability of input data. It is also important to consider the investment of time and resources required by each tool, and agencies should determine which tool(s) to use by ensuring that the level of effort is reasonably proportional to the importance of climate change related considerations. When an agency determines that a quantitative analysis is not appropriate, an agency should complete a qualitative analysis and explain its basis for doing so.

Monetizing costs and benefits is appropriate in some, but not all, cases and is not a new requirement.[35] A monetary cost-benefit analysis need not and should not be used in weighing the merits and drawbacks of the alternatives when important qualitative considerations are being considered. If a cost-benefit analysis is relevant to the choice among different alternatives being considered, it must be incorporated by reference[36] or appended to the statement as an aid in evaluating the environmental consequences. When an agency determines it appropriate to monetize costs and benefits, then, although developed specifically for regulatory impact analyses, the Federal social cost of carbon, which multiple Federal agencies have developed and used to assess the costs and benefits of alternatives in rulemakings, offers a harmonized, interagency metric that can provide decisionmakers and the public with some context for meaningful NEPA review. When using the Federal social cost of carbon, the agency should disclose the fact that these estimates vary over time, are associated with different discount rates and risks, and are intended to be updated as scientific and economic understanding improves.[37]

C. Special Considerations for Biogenic Sources of GHG Emissions From Land Management Actions

With regard to biogenic GHG emissions from land management actions such as prescribed burning, timber stand improvements, fuel load reductions, scheduled harvesting, and livestock grazing,[38] it is important to recognize that these actions contribute both carbon emissions and carbon sequestration to the global carbon cycle. For example, using prescribed fire to maintain natural ecosystem resilience is a human-caused influence on a natural system that both emits GHGs and results in enhanced regrowth and biological sequestration. Notably, the net effect of these agency actions resulting in biogenic emissions may lead to reductions of GHG concentrations through increases in carbon stocks or reduced risks of future emissions. In the forest management context, for example, whether a forest practice is a net carbon sink or source will depend on the climate region (*i.e.,* growth), the rotation length (*e.g.,* southern pine versus old growth), and the human activity (*e.g.,* salvage logging, wood products, bioenergy, etc.).

Federal land management agencies are developing agency-specific principles and guidance for considering biological carbon in management and planning decisions.[39] This guidance acknowledges the importance of: Sustaining long-term ecosystem function and resilience even when this goal may lead to short-term impacts from carbon dioxide emissions; considering carbon within the context of other management objectives and ecosystem service goals; and integrating carbon considerations as part of a balanced and comprehensive program of sustainable management and climate change adaptation.

In addressing biogenic GHG emissions, land management agencies should include a comparison of net GHG emissions and carbon stock changes that would occur with and without implementation of the proposed land management actions. This analysis should take into account the GHG emissions (biogenic and fossil), carbon sequestration potential, and the change in carbon stocks that are relevant to decision-making that are relevant in light of the proposed actions and timeframes under consideration. CEQ recognizes that land management agencies have considered climate impacts and GHG emissions to be most important in analyses at a forest or landscape scale, including programmatic NEPA reviews supporting policy or programmatic decisions. In such cases, land management agencies may be able to reasonably conclude that calculating GHG emissions and carbon stocks for site-specific projects (*e.g.,* a proposed forest restoration) would provide information that is not useful to the public and the decision-making process. Rather, as appropriate, site-specific NEPA analyses can incorporate by reference landscape-scale or other programmatic studies or analyses, or tier to NEPA reviews that considered potential changes in carbon stocks (see section V.D., Programmatic—Broad Based—NEPA Reviews, below).

D. GHG Emissions That Warrant Quantitative Disclosure

Providing a detailed quantitative analysis of emissions regardless of the quantity of emissions is not in keeping with the rule of reason or the concept of proportionality. In considering when to disclose projected quantitative GHG emissions, CEQ is providing a reference point of 25,000 metric tons of $CO_{2\text{-}e}$ emissions on an annual basis below

[34] For example, USDA's COMET-Farm tool can be used to assess the carbon sequestration of existing activities along with the reduction in carbon sequestration (emissions) of project-level activities, *available at www.comet-farm.com.*

[35] 40 CFR 1502.23.

[36] 40 CFR 1502.21 (material may be cited if it is reasonably available for inspection by potentially interested persons within the time allowed for public review and comment).

[37] *See* Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (Nov 2013), *available at http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/technical-update-social-cost-of-carbon-for-regulator-impact-analysis.pdf.*

[38] These land management actions differ from biomass production for energy production.

[39] *See* Priority Agenda Enhancing the Climate Resilience of America's Natural Resources, Council on Climate Change Preparedness and Resilience, at 52 (Oct. 2014), *available at http://www.whitehouse.gov/sites/default/files/docs/enhancing_climate_resilience_of_americas_natural_resources.pdf.*

which a GHG emissions quantitative analysis is not warranted unless quantification below that reference point is easily accomplished. This is an appropriate reference point that would allow agencies to focus their attention on proposed projects with potentially large GHG emissions.

When using this reference point, agencies should keep in mind that the reference point is for purposes of disclosure and not a substitute for an agency's determination of significance under NEPA. The ultimate determination of significance remains subject to agency practice for the consideration of context and intensity, as set forth in the CEQ Regulations.[40]

E. Alternatives

Fundamental to the NEPA process is the consideration of alternatives when preparing an EIS or an EA.[41] The requirement to consider alternatives is meant to ensure that agencies consider approaches with no, or less, adverse environmental effects as compared to the proposed action or preferred alternative. This requirement seeks to ensure that each agency decisionmaker has the information needed to take into account possible approaches to a particular project (including the no-action alternative) that would alter the environmental impact or the balance of other factors considered in making the decision. Consideration of alternatives provides an opportunity to make the best informed, and potentially most beneficial, decision. Such decisions are aided when there are comparisons among preferred and other reasonable alternatives in GHG emissions and carbon sequestration potential, in trade-offs with other environmental values, and in the risk from and the resilience to climate change inherent in a proposed design.

Agencies are required to consider a range of reasonable alternatives consistent with the purpose and need for the proposed action, as well as reasonable mitigation alternatives if not already included in the proposed action (see mitigation discussion below).[42] Accordingly, if a comparison of these alternatives based on GHG emissions, and any potential mitigation to reduce emissions, would be useful to advance a reasoned choice among alternatives and mitigations, then an agency should compare the levels of GHG emissions caused by each alternative—including the no-action alternative—and mitigations to provide information to the public and enable the decisionmaker to make an informed choice.

F. Mitigation

Mitigation is an important component of an agency's considerations under NEPA, and this is no less true as it pertains to climate change. Mitigation, by definition, includes considering the avoidance of the impacts, minimizing them by limiting them, rectifying the impact, reducing or eliminating the impacts over time, or compensating for them.[43] Consequently, agencies should consider reasonable mitigation measures and alternatives as provided for under the existing regulations to lower the level of the potential GHG emissions.

As Federal agencies evaluate proposed mitigation of GHG emissions or of interactions involving the affected environment, the quality of that mitigation—including its permanence, verifiability, enforceability, and additionality[44]—should be carefully evaluated. Among the alternatives that may be considered for their ability to reduce or mitigate GHG emissions and climate effects are enhanced energy efficiency, lower GHG-emitting technology (*e.g.,* using renewable energy), carbon capture, carbon sequestration (*e.g.,* forest and coastal habitat restoration), sustainable land management practices, and capturing or beneficially using fugitive GHG emissions such as methane.

Finally, the CEQ Regulations recognize the value of monitoring to ensure that mitigation is carried out as provided in a Finding of No Significant Impact or Record of Decision. In cases where mitigation measures are designed to address the effects of climate change, the agency's final decision should identify those mitigation measures and the agency should consider adopting an appropriate monitoring program.[45]

IV. Considering the Effects of Climate Change on the Environmental Consequences of a Proposed Action

An agency should identify the affected environment so as to provide a basis for comparing the current and the future state of the environment should the proposed action or any of its reasonable alternatives proceed.[46] The current and expected future state of the environment without the proposed action represents the reasonably foreseeable affected environment that should be described based on available climate change information, including observations, interpretive assessments, predictive modeling, scenarios, and other empirical evidence.[47] The temporal bounds for the future state of the environment are determined by the expected lifespan of the proposed project.[48] Agencies should remain aware of the evolving body of scientific information and its clarification of climate impacts at a more localized level.[49]

The analysis of impacts on the affected environment should focus on those aspects of the human environment that are impacted by both the proposed action and climate change. Climate change can affect the environment of a proposed action in a variety of ways. Climate change can increase the vulnerability of a resource, ecosystem, human community, or structure, which would then be more susceptible to climate change and other effects and result in a proposed action's effects being more environmentally damaging. For example, a proposed action may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is exposed to increasing atmospheric temperatures. Such considerations are squarely within the realm of NEPA, informing decisions on whether to proceed with and how to design the proposed action so as to minimize impacts on the environment, as well as informing possible adaptation measures to address these impacts,

[40] 40 CFR 1508.27.

[41] 42 U.S.C. 4332(2)(C) and (E); 40 CFR 1502.14 and 1508.9(b).

[42] *See* 42 U.S.C. 4332(2)(C), 4332(2)(E), and 40 CFR 1502.14(f), 1508.9(b).

[43] 40 CFR 1508.20, 1508.25 (Mitigation includes avoiding the impact, limiting the degree or magnitude of the action, reducing or eliminating the impact over time. Alternatives include mitigation measures not included in the proposed action).

[44] Regulatory additionality requirements are designed to ensure that a GHG reduction credit is limited to an entity with emission reductions that are above regulatory requirements. *See http://www.eia.doe.gov/oiaf/1605/FAQ_GenInfoA.htm#Additionality.*

[45] 40 CFR 1505.3; CEQ Memorandum to Heads of Federal Agencies, *Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact,* January 14, 2011, *available at https://ceq.doe.gov/current_developments/docs/Mitigation_and_Monitoring_Guidance_14Jan2011.pdf.*

[46] 40 CFR 1502.16 and 1508.9 (providing that environmental impact statements and environmental assessments must succinctly describe the environmental impacts on the area(s) to be affected or created by the alternatives under consideration).

[47] *See Considering Cumulative Effects* (CEQ 1997), *available* on *www.nepa.gov at https://ceq.doe.gov/current_developments/docs/Improving_NEPA_Efficiencies_06Mar2012.pdf.*

[48] *Id.* Agencies should consider their work under Executive Order 13653 that considers how capital investments will be effected by a changing climate over time.

[49] *See, e.g., http://nca2014.globalchange.gov/report/regions/coasts.*

ultimately enabling the selection of smarter, more resilient actions.

According to the National Research Council,[50] USGCRP, and others, GHGs already in the atmosphere will continue altering the climate system into the future, even with current or future emissions control efforts.[51] Therefore, climate change adaptation [52] and resilience [53]—defined as adjustments to natural or human systems in response to actual or expected climate changes—are important considerations for agencies contemplating and planning actions with effects that will occur both at the time of implementation and into the future.

As called for under NEPA, the CEQ Regulations, and CEQ guidance, the NEPA review process should be integrated with planning at the earliest possible time.[54] Decades of NEPA practice have shown that a NEPA process that is integrated with the planning process provides useful information that program and project planners can consider in the design of the proposed action and the alternatives. Climate change effects should be considered in the analysis of projects that are located in areas that are considered vulnerable to specific effects of climate change, such as increasing sea level or other ecological change, within the project's anticipated useful life. In such cases, a NEPA review will provide relevant information that agencies can use to consider alternatives with preferable overall environmental outcomes. For example, an agency considering a proposed action involving long-term development of transportation infrastructure on a coastal barrier island will want to take into account climate change to avoid the environmental and, as applicable, economic consequences of rebuilding should potential climate change impacts such as sea level rise and more intense storms shorten the projected life of the project.[55] Given the length of time involved in present sea level projections, such considerations typically will not be relevant to short-term actions. Individual agency adaptation plans and interagency adaptation strategies, such as the National Fish, Wildlife and Plants Climate Adaptation Strategy, and the National Action Plan for managing freshwater resources in a changing climate, provide good examples of relevant and useful information that can be considered.[56]

In addition, the particular impacts of climate change on vulnerable communities may be considered in the design of the action or the selection among alternatives so that the proposed action will be more resilient and sustainable and thereby have lesser impacts on those communities.[57] For example, chemical facilities located near the coastline could have increased risk of spills or leakages due to sea level rise or increased storm surges, putting local communities and environmental resources at greater risk. Finally, considering climate change effects can help ensure that agencies do not generate additional GHGs—or expend additional time and funds—if the project has to be replaced, repaired, or modified.

V. Traditional NEPA Tools

A. Scoping and Framing the NEPA Review

To effectuate integrated decision-making, avoid duplication, and focus the NEPA review, the CEQ Regulations provide for scoping.[58] In scoping, the agency determines the issues that the EA or EIS will address and identifies the impacts related to the proposed action that will be considered in the analyses.[59] An agency can use the scoping process to help it determine whether analysis is relevant and, if so, the extent of analysis appropriate for a proposed action, consistent with the purpose and need.[60] When scoping for the issues associated with the proposed agency action that may be related to climate change, the nature, location, timeframe, and type of the proposed action will help determine the degree to which consideration of climate projections is warranted. Scoping a proposed action can help an agency determine whether climate change considerations warrant emphasis and detailed analysis and disclosure, and provide a basis for an agency determination that a detailed consideration of emissions is or is not appropriate for a proposed action.

Consistent with this guidance, agencies can develop practices and guidance for framing the NEPA review by determining whether an environmental aspect of the proposed action merits detailed analysis and disclosure. Grounded on the principles of proportionality and the rule of reason, such aids can help an agency determine the extent to which an analysis of GHG emissions and climate

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[50] The National Research Council is the operating arm of the National Academy of Sciences and National Academy of Engineering. Through its independent, expert reports, workshops, and other scientific activities, NRC's mission is to improve government decision-making and public policy, increase public understanding, and promote the acquisition and dissemination of knowledge in matters involving science, engineering, technology, and health. For more information about NRC, see *http://www.nationalacademies.org/nrc/index.html.*

[51] *See* Second National Climate Change Assessment, USGCRP, 2009, *available at http://www.globalchange.gov/what-we-do.*

[52] Action that can be implemented as a response to changes in the climate to harness and leverage its beneficial opportunities (*e.g.,* expand polar shipping routes) or ameliorate its negative effects (*e.g.,* protect installations from sea level rise). National Research Council, *Adapting to the Impacts of Climate Change* (2010), *available at http://nas-sites.org/americasclimatechoices/sample-page/panel-reports/panel-on-adapting-to-the-impacts-of-climate-change.*

[53] Capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment. *Id.* Ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, capacity for self-organization, and capacity to adapt to stress and change. M.L. Parry et al., *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* (2007), *available at http://www.ipcc.ch/publications_and_data/publications_ipcc_fourth_assessment_report_wg2_report_impacts_adaptation_and_vulnerability.htm.*

[54] 42 U.S.C. 4332 (agencies of the Federal Government shall . . . utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making); 40 CFR 1501.2 (Agencies shall integrate the NEPA process with other planning at the earliest possible time); CEQ Memorandum to Heads of Federal Agencies, *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act,* March 6, 2012, *available at https://ceq.doe.gov/nepa/regs/scope/scoping.htm.*

[55] *See Impacts of Climate Change and Variability on Transportation Systems and Infrastructure: Gulf Coast Study,* (*www.globalchange.gov/browse/reports/sap-47-impacts-of-climate-change-and-variability-on-transportation-systems-and*), and *Abrupt Climate Change* (*http://library.globalchange.gov/sap-3-4-abrupt-climate-change* (discussing the likelihood of an abrupt change in sea level).

[56] *See http://sustainability.performance.gov* for agency sustainability plans, which contain agency adaptation plans. *See also http://www.wildlifeadaptationstrategy.gov* and *http://www.whitehouse.gov/sites/default/files/microsites/ceq/2011_national_action_plan.pdf.*

[57] *See https://www.blm.gov/epl-front-office/projects/nepa/5251/42462/45213/NPR-A_FINAL_ROD_2-21-13.pdf.*

[58] *See* 40 CFR 1501.7 (''There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping.''); *See also Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act* (CEQ 2012), *available* on *www.nepa.gov at https://ceq.doe.gov/current_developments/docs/Improving_NEPA_Efficiencies_06Mar2012.pdf* (the CEQ Regulations explicitly address scoping for preparing an EIS, agencies can also take advantage of scoping whenever preparing an EA).

[59] 40 CFR 1500.4(b), 1500.4(g) and 1501.7.

[60] *See* 40 CFR 1501.7 (stating that the agency preparing the NEPA analysis use the scoping process to, among other things, determine the scope and identify the significant issues to be analyzed in depth) and CEQ, *Memorandum for General Counsels, NEPA Liaisons, and Participants in Scoping* (1981), *available at https://ceq.doe.gov/publications/cumulative_effects.html.*

change impacts are useful to the public and the decision-making process for distinguishing between the no-action and proposed alternatives and mitigations.[61] The agency should explain such a framing process and its application to the proposed action to the decisionmakers and the public during the NEPA review and in the EA or EIS document.

B. Incorporation by Reference

In accordance with NEPA's rule of reason and standards for obtaining information regarding reasonably foreseeable effects on the human environment, action agencies need not undertake exhaustive research or analysis of potential climate change impacts in the project area or on the project itself, but may instead summarize and incorporate by reference the relevant scientific literature.[62] Incorporation by reference is of value in considering GHG emissions where an agency is considering the implications of climate change for the environmental effects of the proposed action. For example, agencies may summarize and incorporate by reference the major peer-reviewed assessments from the USGCRP and underlying technical reports such as their Synthesis and Assessment Products.[63] Particularly relevant are the reports on climate change impacts on water resources, ecosystems, agriculture and forestry, health, coastlines, and arctic regions in the United States.[64]

When using scenarios or climate modeling information (including seasonal, interannual, long-term, and regional-scale predictions), agencies should consider their inherent limitations and uncertainties and disclose these limitations in explaining the extent to which they rely on particular studies or projections.[65] Agencies should take into account that the outputs of coarse-resolution global climate models, commonly used to predict or project climate change contingent on a particular emission scenario at a continental or national scale, may have limitations on how they can be used in regional or local impact studies.[66]

C. Using Available Information

Agencies are expected to make decisions using current scientific information and methodologies. Agencies are not required to conduct original research in NEPA analyses to fill scientific gaps. Consequently, agencies are not expected to await the development of new tools or scientific information to conclude their NEPA analyses and documentation.[67] Agencies should exercise their discretion to select and utilize the tools, methodologies, and scientific and research information that are of high quality and most appropriate for the level of analysis and the decisions being made.

Agencies should be aware of the ongoing efforts to address the impacts of climate change on human health and vulnerable communities. Certain groups, including children, the elderly, and the poor, are most vulnerable to climate-related health effects and frequently lack the capacity to engage on issues that disproportionately affect them. We recommend that agencies periodically engage their environmental justice experts, and potentially the Federal Interagency Working Group on Environmental Justice,[68] to identify interagency approaches to impacts that may have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.[69]

D. Programmatic—Broad Based—NEPA Reviews

Agency decisions can address different geographic scales that can range from the programmatic or landscape level, to the site- or project-specific level. Agencies sometimes conduct analyses or studies at the national level or on other broad scales (*e.g.,* landscape, regional, or watershed) to assess the status of one or more resources or to determine trends in changing environmental conditions.[70] In the context of long-range energy, transportation, and resource management actions, for example, an agency may decide that it would be useful and efficient to provide an aggregate analysis of GHG emissions or climate change effects in a programmatic analysis and then incorporate by reference that analysis into future NEPA reviews.

A tiered, analytical decision-making approach using a programmatic NEPA review is used for many types of Federal actions[71] and can be particularly relevant to addressing proposed land, oceanic, and resource management plans. Under such an approach, a broad-scale programmatic NEPA analysis is conducted for actions such as USDA Forest Service land and resource management plans, Bureau of Land Management resource management plans, or Natural Resources Conservation Service conservation programs. Subsequent NEPA analyses for site-specific decisions—such as projects that implement land, oceanic, and resource management plans—are tiered from the broader programmatic analysis, drawing upon its basic framework analysis to avoid repeating analytical efforts for each tiered decision. Examples of project- or site-specific actions that can benefit from a programmatic NEPA review include: Constructing transmission towers; conducting prescribed burns; approving grazing leases; granting a right-of-way; authorizing leases for oil and gas drilling; authorizing construction of wind turbines; and approving hard rock mineral extraction.

A programmatic NEPA review may also serve as an efficient mechanism to describe Federal agency efforts to adopt

[61] *See* for example: Matthew P. Thompson, Bruce G. Marcot, Frank R. Thompson, III, Steven McNulty, Larry A. Fisher, Michael C. Runge, David Cleaves, and Monica Tomosy, The Science of Decisionmaking: Applications for Sustainable Forest and Grassland Management in the National Forest System, *available at http://www.fs.fed.us/rm/pubs_other/rmrs_2013_thompson_m004.pdf;* General Technical Report WO–88, July 2013; US Forest Service Comparative Risk Assessment Framework And Tools, *available at http://www.fs.fed.us/psw/topics/fire_science/craft/craft;* and Julien Martin, Michael C. Runge, James D. Nichols, Bruce C. Lubow, and William L. Kendall 2009. Structured decision making as a conceptual framework to identify thresholds for conservation and management. Ecological Applications 19:1079–1090, *available at http://dx.doi.org/10.1890/08-0255.1.*

[62] 40 CFR 1502.21 (material may be incorporated by reference if it is reasonably available for inspection by potentially interested persons during public review and comment).

[63] *http://www.globalchange.gov/browse/reports.*

[64] *See* Third National Climate Assessment.

[65] 40 CFR 1502.21, 1502.22.

[66] *See Climate Models: An Assessment of Strengths and Limitations, available at http://data.globalchange.gov/assets/91/7e/0df45f584b652ea95e947ef813d0/sap3-1-final-all.pdf.*

[67] 40 CFR 1502.24 (requiring agencies to ensure the professional and scientific integrity of the discussions and analyses in environmental impact statements).

[68] For more information on the Federal Interagency Working Group on Environmental Justice co-chaired by EPA and CEQ, see *http://www.epa.gov/environmentaljustice/interagency/index.html.*

[69] President's Memorandum for the Heads of All Departments and Agencies, Executive Order on Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, February 11, 1994, *available at https://ceq.doe.gov/nepa/regs/eos/ii-5.pdf;* Environmental Justice Guidance Under the National Environmental Policy Act, CEQ, December 1997, *available at https://ceq.doe.gov/nepa/regs/ej/justice.pdf.*

[70] Such a programmatic study is distinct from a programmatic NEPA review which is appropriate when the action being considered is subject to NEPA requirements and is establishing formal plans, establishing agency programs, and approving a suite of similar projects.

[71] 40 CFR 1502.20, 1508.28. A programmatic NEPA review is appropriate when a decision is being made that is subject to NEPA, such as establishing formal plans, establishing agency programs, and approving a suite of similar projects.

sustainable practices for energy efficiency, GHG emissions avoidance or reduction, petroleum product use reduction, and renewable energy use, as well as other sustainability practices.[72] While broad department- or agency-wide goals may be of a far larger scale than a particular program or proposed action, an analysis that informs how an action affects that broader goal can be of value.

VI. Conclusion and Effective Date

This guidance document informs Federal agencies on how to apply fundamental NEPA principles to the analysis of climate change through assessing GHG emissions and the effects of climate change for Federal actions subject to NEPA. It identifies opportunities for using information developed during the NEPA review process to take into account appropriate adaptation opportunities. Applying this guidance will promote an appropriate and measured consideration of GHG emissions and the effects of climate change in the NEPA process through a clearer set of expectations and a more transparent process, thereby informing decisionmakers and the public and resulting in better decisions. This guidance also addresses questions raised by other interested parties.[73]

Agencies are encouraged to apply this guidance to all new agency actions moving forward and, to the extent practicable, to build its concepts into currently on-going reviews.

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[72] *See* Executive Order 13514—Federal Leadership in Environmental, Energy, and Economic Performance, 74 FR 52117–52127 (Oct. 5, 2009); Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, 72 FR 3919 (Jan. 26, 2007), *available at www.gpo.gov/fdsys/pkg/FR-2007-01-26/pdf/07-374.pdf.*

[73] Recommendations of the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, November 2014, at page 20 (recommendation 2.7), *available at www.whitehouse.gov/sites/default/files/docs/task_force_report_0.pdf;* GAO report: Future Federal Adaptation Efforts Could Better Support Local Infrastructure Decision Makers, April 12, 2012, *available at http://www.gao.gov/products/GAO-13-242; see also* the International Center for Technology Assessment, Natural Resources Defense Council, and Sierra Club Petition Requesting that the Council on Environmental Quality Amend its Regulations to Clarify that Climate Change Analyses be Included in Environmental Review Documents, February 28, 2008.

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