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

WHEN: Tuesday, March 22, 2011
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1206

Practices and Procedures, Board Meetings

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its open meeting regulations to ensure consistency with the Government in the Sunshine Act.

DATES: The effective date of this final rule is February 28, 2011.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200, fax: (202) 653–7130, or e-mail: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: On November 18, 2010, the Board published a proposed rule in which several proposed amendments to 5 CFR 1206.7 were set forth (75 FR 70617). Interested parties were invited to submit comments. No comments were received. This final rule implements the changes to 5 CFR 1206.7 offered in the Proposed Rule without alteration.

The Final Rule

This final rule makes several amendments to 5 CFR 1206.7. The heading for § 1206.7 is revised to more fully advise the reader of matters addressed therein. Paragraph (a)(1) is added to make clear that the Board may, instead of maintaining a transcript or electronic recording, maintain a set of minutes of a meeting closed pursuant to section (10) of 5 U.S.C. 552b(c). This revised section also sets forth the information that must be included in a set of minutes. Paragraph (a)(2) states the Board's responsibility to promptly make available to the public copies of transcripts, recordings, or minutes of closed meetings, except where the Board determines that such information may be withheld pursuant to 5 U.S.C. 552b(c). Paragraph (a)(3) addresses the Board's responsibility to retain copies of transcripts, recordings, or minutes of closed meetings. Paragraph (b) of 5 CFR 1206.7 is unchanged by this final rule.

List of Subjects in 5 CFR Part 1206

Administrative practice and procedure, Board meetings.

Accordingly, the Board amends 5 CFR part 1206 as follows:

PART 1206—[AMENDED]

■ 1. The authority citation for 5 CFR part 1206 continues to read:

Authority: 5 U.S.C. 552b.

■ 2. Revise § 1206.7 to read as follows:

§ 1206.7 Transcripts, recordings, or minutes of open and closed meetings; public availability; retention.

(a) *Closed Meetings.* (1) For every meeting, or portion thereof, closed pursuant to this part the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the Board. For each such meeting, or portion thereof, the Board shall maintain a copy of the General Counsel's certification under § 1206.6(b) of this part, a statement from the presiding official specifying the time and place of the meeting and naming the persons present, a record (which may be part of the transcript) of all votes and all documents considered at the meeting, and a complete transcript or electronic recording of the proceedings, except that for meetings or portions of meetings closed pursuant to section (10) of 5 U.S.C. 552b(c), the Board may maintain either a transcript, electronic recording, or a set of minutes. In lieu of a transcript or electronic recording, a set of minutes shall fully and accurately summarize any action taken, the reasons therefore and views thereon, documents considered and the members' vote on each roll call vote, if any.

(2) The Board shall make promptly available to the public copies of transcripts, recordings, or minutes maintained as provided in accordance with this paragraph (a), except to the extent the items therein contain information which the Board determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs or the actual cost of transcription.

(3) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any Board proceeding with respect to which the meeting or portion was held whichever occurs later.

(b) *Open Meetings.* Transcripts or other records will be made of all open meetings of the Board. Those records will be made available upon request at a fee representing the Board's actual cost of making them available.

William D. Spencer,
Clerk of the Board.

[FR Doc. 2011–4317 Filed 2–25–11; 8:45 am]
BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Establishment of Office of the Chief Scientist; Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority within the Department of Agriculture (USDA) to reflect the establishment of the Office of the Chief Scientist within the Research, Education, and Economics (REE) mission area of USDA, and to identify the authorities of the Under Secretary for REE (Chief Scientist of the Department) and the Director of the Office of the Chief Scientist with respect to scientific integrity within USDA and the coordination of agricultural

research, education, and extension programs and activities.

DATES: This rule is effective February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Chavonda Jacobs-Young, Director, Office of the Chief Scientist, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250, or *telephone:* (202) 720–3444.

SUPPLEMENTARY INFORMATION:

Establishment of the Office of the Chief Scientist

On March 16, 2010, the Secretary of Agriculture (Secretary) established the Office of the Chief Scientist (OCS) within the Research, Education, and Economics (REE) mission area of USDA. For further information, see Secretary's Memorandum 1066–001, "Establishment of the Office of the Chief Scientist." OCS exists to provide leadership and coordination to ensure that research supported by and scientific advice provided to USDA and external stakeholders are held to the highest standards of intellectual rigor and scientific integrity. OCS also assists the Under Secretary for REE in coordinating the agricultural research, education, and extension activities of the Department through a series of divisions focused on renewable energy, natural resources, and environment; food safety, nutrition, and health; plant health and production and plant products; animal health and production and animal products; agricultural systems and technology; and agricultural economics and rural communities.

OCS is headed by a Director that reports to the Under Secretary for REE. Pursuant to section 251(c) of the Department of Agriculture Reorganization Act of 1994 (Reorganization Act) (7 U.S.C. 6971(c)), as amended by section 7511 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, the Under Secretary for REE also holds the title of Chief Scientist of the Department (Chief Scientist).

This rule amends the delegations of authority in 7 CFR 2.21 to reflect that the Under Secretary for REE, as the Chief Scientist, is delegated primary responsibility for ensuring that research and scientific advice are held to the highest standards of intellectual rigor and scientific integrity. The Under Secretary for REE, as the Chief Scientist, is also responsible for coordinating the agricultural research, education, and extension activities of the Department pursuant to sections 251(c)(2) and 251(d)(2) of the Reorganization Act (7 U.S.C. 6971(c)(2), (d)(2)). This rule also adds a new 7 CFR 2.69 to reflect the establishment of OCS and to delegate to the Director of OCS the authority to assist the Chief Scientist in carrying out its responsibilities.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Orders 12866 and 12988. This action is not a rule as defined by the Regulatory Flexibility Act, Public Law 96–354, and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, Subtitle A of Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

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

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries, and Assistant Secretaries for Congressional Relations and Administration

■ 2. Amend § 2.21 as follows:

■ a. Revise paragraph (a) introductory text and the heading of paragraph (a)(1); and

■ b. Add new paragraphs (a)(11) and (a)(12), to read as follows:

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics (who holds the title of Chief Scientist of the Department).

(1) *Related to research, extension, and education.* * * *

* * * * *

(11) *Related to scientific integrity.* (i) Provide to the Secretary information on topics that can benefit from scientific input to ensure informed decision-making at the highest levels of Government.

(ii) Facilitate the coordination and collaboration within the Department on high priority science issues that will benefit from intra-Departmental collaboration, including coordinating the assessment of the relevance, quality, performance, and impact of the Department's efforts in science.

(iii) Build partnerships within the scientific community by serving as a point of contact for interactions with other agencies of science, universities, and other external members of the scientific community for the purpose of leveraging and promoting relationships to explore common scientific interests and shared goals.

(iv)Develop mechanisms to address scientific integrity within the Department.

(v) Serve as Chair of the USDA Science Council.

(12) *Related to coordination of agricultural research, education, and extension programs and activities.* Coordinate the agricultural research, education, and extension activities of the Department pursuant to sections 251(c)(2) and 251(d)(2) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971(c)(2), (d)(2)).

* * * * *

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

■ 3. Add a new § 2.69 to subpart K, to read as follows:

§ 2.69 Director, Office of the Chief Scientist.

(a) *Delegations.* Pursuant to § 2.21(a)(11) and (a)(12), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Director, Office of the Chief Scientist.

(1) Provide to the Under Secretary (Chief Scientist of the Department) information on topics that can benefit from scientific input to ensure informed decision-making at the highest levels of Government.

(2) Assist the Chief Scientist with facilitating the coordination and collaboration within the Department on high priority science issues that will benefit from intra-Departmental

collaboration, including coordinating the assessment of the relevance, quality, performance, and impact of the Department's efforts in science.

(3) Assist the Chief Scientist with building partnerships within the scientific community and with the Chief Scientist's role as point of contact for interactions with other agencies of science, universities, and other external members of the scientific community for the purpose of leveraging and promoting relationships to explore common scientific interests and shared goals.

(4) Assist the Chief Scientist with developing mechanisms to address scientific integrity within the Department.

(5) [Reserved]

(6) Assist the Chief Scientist in carrying out sections 251(c)(2) and 251(d)(2) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971(c)(2), (d)(2)) by exercising the duties set forth in section 25 l(e)(3)(E) of that Act (7 U.S.C. 6971(e)(3)(E)) through a series of divisions organized by the following focus areas:

(i) Renewable energy, natural resources, and environment;

(ii) Food safety, nutrition, and health;

(iii) Plant health and production and plant products;

(iv) Animal health and production and animal products;

(v) Agricultural systems and technology; and

(vi) Agricultural economics and rural communities.

(b) The divisions will be headed by Division Chiefs/Senior Advisors (or a similar title), and will be known collectively as the Research, Education, and Extension Office.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2011–4128 Filed 2–25–11; 8:45 am]

BILLING CODE 3410–90–M

POSTAL SERVICE

39 CFR Parts 111 and 121

Combined Mailings of Standard Mail and Periodicals Flats

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 705.14 and 708.1.1 to provide a new option for mailers to combine Standard Mail® flats and Periodicals flats within the same bundle, when placed on pallets, and to combine bundles of Standard Mail flats and bundles of Periodicals flats on the same pallet. The Postal Service is also amending the *Code of Federal Regulations* to reflect that the Standard Mail service standards apply to all Periodicals flats pieces entered in such combined mailings.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Jonathan Leon at 202–268–7443, or Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is providing a new option for mailers to combine Standard Mail flats and Periodicals flats, when bundled and placed on pallets. Mailers using this option may combine different-class mailpieces within the same bundle (comail), or combine separate same-class bundles (of different classes) on the same pallet (copalletize) to maximize presorting or to qualify for deeper destination entry discounts. All mailpieces prepared under this option are required to be bundled and placed on pallets. Combining mailings enhances operational efficiencies within postal processing by allowing mailers to place mailpieces in bundles on pallets that might have been placed in sacks if prepared separately.

This new option does not change current DMM content and eligibility standards applicable to Periodicals and Standard Mail. Mailers using this option must continue to be required to meet the minimum volume standards for Standard Mail of 200 pieces or 50 pounds. Periodicals publications must be authorized or have a pending authorization to mail at Periodicals prices. The current processes that identify and isolate Periodicals origin mixed area distribution center (OMX) mailpieces, for integration into the First-Class Mail® mailstream, will not be available when combining Standard Mail flats and Periodicals flats on pallets. All mailpieces included in a combined mailing of Standard Mail and Periodicals flats on pallets must be machinable in accordance with DMM 301.3.0.

Mailers wishing to combine Standard Mail and Periodicals flats under this option are required to submit a request for authorization, in writing, to the Manager, Business Mailer Support (*see* DMM 608.8.1 for contact information).

All mailpieces included in a combined mailing of Periodicals flats and Standard Mail flats are required to meet the standards for full-service automation mailings. Intelligent Mail® barcodes placed on mailpieces prepared under this program are required to include Service Type Identifiers appropriate for the class of mail of the individual mailpiece.

Participating mailers are required to present standardized electronic mailing documentation for each combined mailing, and at the time of mailing, the following additional documentation:

- An edition or version summary for all pieces in the mailing.
- A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.
- A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined mailing. Mailers may provide a single consolidated postage statement and postage statement register of all Standard Mail mailings if they are itemized.
- A register of Forms 8125, *Plant Verified Drop Shipment (PVDS) Verification and Clearance*, (PS 8125C) that consolidates all of the mailings to the destinations where the mail is entered.

When using this option, postage on all Standard Mail pieces must be paid through a permit imprint using a special postage payment system at the Post Office™ serving the mailer.

Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account. Participating mailers will be required to apportion the Periodicals bundle charge based on the number of Periodicals copies in the bundles and container charge based on the weight of the Periodicals portion of the container.

Mailers combining Standard Mail flats and Periodicals flats will not have the option to form ADC pallets or to dropship to ADCs. As a result, Periodicals publications included in combined mailings will not have access to DADC prices. Other specific prices for Periodicals flats in a combined mailing will be assessed as follows:

- The bundle prices applicable to the ADC container level will be applied to the ASF/NDC container level.
- The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet level.
- The bundle price applicable to the ADC bundle placed on the ADC container level will apply to mixed ADC bundles placed on mixed NDC pallets.
- The container price applicable to the ADC pallet level will also apply to the mixed NDC pallet level.

Standard Mail flats and Periodicals flats combined on pallets will be processed as Standard Mail; and the Periodicals mailpieces included within these combined mailings may receive

deferred handling. Periodicals mailpieces included within mailings of combined Standard Mail flats and Periodicals flats will be subject to the USPS service standards applicable to Standard Mail. These mailings must also be identified as Standard Mail when scheduling dropship appointments in the Facility Access and Shipment (FAST®) system.

Mailers combining Standard Mail flats and Periodicals flats on pallets must populate field 10, "*Product or Publication Title or Names*," of PS Form 8125 and/or field 11b, "*Product Name/ID*," of PS Form 8125C with "MIX COMAIL" when preparing dropship documentation for these mailings.

Any mixed NDC pallets prepared under this program are required to be entered at the NDC servicing the 3-digit ZIP® Code of the entry Post Office for the mailer's plant. Mailers combining Standard Mail flats and Periodicals flats on pallets may reallocate bundles under DMM 705.8.11 and 705.8.13.

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats are required to be identified as containing mixed classes through the use of an optional endorsement line (OEL) in accordance with these standards.

Mailers preparing combined mailings of Standard Mail flats and Periodicals flats are required to provide a written notification to each participating Periodicals publisher that describes the combined mailing process and the potential for pieces to receive deferred USPS handling. These notifications, signed and dated by the Periodicals publisher, are required to be retained by the mailer and must be available for review by the USPS upon request.

The Postal Service also revises 39 CFR Part 121.2 by adding a new item c to describe the USPS processing of Periodicals mailpieces included in combined mailings of Standard Mail flats and Periodicals flats, and specifying that Periodicals mailpieces included in these mailings will be assigned the service standards applicable to Standard Mail pieces.

List of Subjects

39 CFR Part 111

Administrative practice and procedure, Postal Service.

39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Parts 111 and 121 are amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

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

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

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Services

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.5 General Preparation

8.5.1 Presort

[Revise the fifth sentence of 8.5.1 as follows:]

* * * Except as described in 15.1i, bundles must not be placed on mixed ADC or mixed NDC pallets. * * *

* * * * *

[Renumber current 15.0 through 23.0 as new 16.0 through 24.0 and add new 15.0 as follows:]

15.0 Combining Standard Mail Flats and Periodicals Flats

15.1 Basic Standards

Authorized mailers may combine Standard Mail flats and Periodicals flats in a single mailing as follows:

a. Each mailpiece must meet the standards in 340 for Standard Mail and 707 for Periodicals. Periodicals publications must be authorized or pending original or additional entry at the office of mailing.

b. Mailers must prepare pieces in bundles on pallets.

c. Except for residual volume placed on a mixed NDC pallet under 15.4.1j, all pallets meeting minimum volume requirements must be dropshipped to the appropriate DNDC or DSCF.

d. Unless authorized by the local processing and distribution manager, any mixed NDC pallets prepared under this program must be entered at the NDC servicing the 3-digit ZIP Code of the entry Post Office for the mailer's plant.

e. All pieces included in a combined mailing of Standard Mail and Periodicals must meet the requirements for full-service automation, as described in 23.0.

f. Mailers must pay all annual mailing fees at the office of mailing.

g. Each mailing must include at least 200 pieces or 50 pounds of Standard Mail.

h. All mailpieces combined within bundles, in accordance with 14.0, must be similar in size so as to create stable bundles. Bundles placed on pallets under this provision must be prepared to create stable pallets.

i. When residual pieces are included in a combined mailing of Standard Mail flats and Periodicals flats on pallets, these pieces must be placed on mixed NDC pallets and entered at the NDC serving the mailer's plant.

j. All mailpieces included in a combined mailing of Standard Mail flats and Periodicals flats on pallets must be machinable in accordance with 301.3.0.

15.1.1 Service Objectives

The Postal Service handles combined mailings of Standard Mail flats and Periodicals flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the USPS service standards applicable to Standard Mail.

15.1.2 Postage Payment

Postage for all Standard Mail pieces must be paid with permit imprint using a special postage payment system in 2.0 through 4.0 at the Post Office serving the mailer's plant. Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account.

15.1.3 Documentation

Mailers must present standardized electronic documentation according to 708.1.0. This documentation must accurately reflect the final piece count in the combined mailing. In addition, mailers must provide:

a. An edition or version summary for all pieces in the mailing. The summary may be part of the USPS qualification report and must include version ID, product or edition code, class of mail, piece weight of each version, and number of pieces by version; and for Periodicals, USPS or permit number (or pending permit number), issue date, and advertising percentage.

b. A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.

c. A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined

mailing. Mailers may provide a single consolidated postage statement and a consolidated postage statement register of all Standard Mail mailings if they are itemized.

d. A register of Forms 8125 (or PS 8125C) that consolidates all of the mailings into the destinations where the mail is dropshipped.

e. Documentation to support zones and bundle totals, if requested.

f. When requested, a copy of a notification document signed and dated by the Periodicals publisher, acknowledging their participation in a combined mailing of Standard Mail and Periodicals and the potential for their mailpieces to receive deferred USPS handling.

g. Any additional documentation to support postage payment system records, if requested.

15.1.4 Authorization

A mailer must submit a written request to the manager, Business Mailer Support (*see* 608.8.1 for address) to combine mailings of Standard Mail flats and Periodicals flats. The request must show the mailer's name and address, the mailing office, evidence of authorization to mail using a special postage payment system under 2.0 through 4.0, procedures for combining the mailing, the expected date of first mailing, quality control procedures, and a sample of all supporting mailing documentation, including postage statements and the USPS Qualification Report. Business Mailer Support will review the documentation and provide written authorization. A mailer may terminate an authorization at any time by written notice to the postmaster of the office serving the mailer's location. Business Mailer Support may terminate an authorization by written notice if the mailer does not meet the standards.

15.1.5 Price Eligibility

Apply prices based on the standards in 340 for Standard Mail. Prices are based on the standards in 707 for Periodicals and as modified under the standards for this program.

15.1.6 Piece Prices

Apply piece prices based on the bundle level. Pieces contained within mixed class bundles may claim prices based on the presort level of the bundle.

15.1.7 Applying the Periodicals Bundle Charge

Apply bundle charges as follows:

a. Calculate the percentage of Periodicals copies in a bundle.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable bundle charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each in the bundle.

15.1.8 Applying the Periodicals Container Charge

Apply container charges to pallets as follows:

a. Calculate the percentage of the weight of Periodicals copies on each pallet.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable container charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each on the pallet.

15.1.9 Other Periodicals Pricing

Other prices for Periodicals flats in a combined mailing of Standard Mail and Periodicals flats on pallets will be assessed as follows:

a. The bundle prices applicable to the ADC container level will be applied to the ASF/NDC container levels.

b. The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet levels.

15.1.10 Bundle Reallocation To Protect the SCF or NDC Pallet

Mailers may reallocate bundles under 8.11 or 8.13 to protect the SCF or NDC pallet.

15.2 Combining Standard Mail Flats and Periodicals Flats in the Same Bundle

15.2.1 Bundling and Labeling

Standard Mail flats and Periodicals flats may be combined in carrier route, 5-digit (scheme), 3-digit, ADC, and Mixed ADC bundles when prepared according to 707.19.0 and these additional standards:

a. Each bundle containing combined Standard Mail flats and Periodicals flats must contain a minimum of 10 pieces. Bundles of only Standard Mail flats must contain a minimum of 10 pieces. Bundles of only Periodicals flats must contain a minimum of 6 pieces.

b. Firm bundles must contain only Periodicals flats.

15.2.2 Mailpiece and Bundle Identification

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with the standards in 708.7.1.8.

15.2.3 Pallet Presort and Labeling

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals mailpieces, except as allowed under 8.5.3. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 14.4.1.

15.3 Combining Bundles of Standard Mail Flats and Periodicals Flats on the Same Pallet

15.3.1 Bundling and Labeling

Mailers must prepare bundles according to the standards for the class of mail and the prices claimed.

15.3.2 Mailpiece and Bundle Identification

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with standards in 708.7.1.8.

15.3.3 Pallet Presort and Labeling

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals, except as allowed under 8.5.3. When reallocating bundles under 8.11 or 8.12, mailers do not have to achieve the finest pallet presort level possible. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 14.4.1.

15.4 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

When combining Standard Mail and Periodicals flats within the same bundle or combining bundles of Standard Mail flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. Preparation, sequence and labeling:

a. *Merged 5-digit scheme, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 8.10.2d. Labeling:

1. Line 1: L001.

2. Line 2: "STD/PER FLTS CR/5D;" followed by "SCHEME" (or "SCH"); followed by "MIX COMAIL."

b. *5-digit scheme carrier routes, required.* Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 2.2e. Labeling:

1. Line 1: L001.

2. Line 2: "STD/PER FLTS"; followed by "CARRIER ROUTES" (or "CR–RTS"); followed by "SCHEME" (or "SCH"); followed by "MIX COMAIL."

c. *5-digit carrier routes, required.* Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS"; followed by "CR/5D"; followed by "MIX COMAIL."

d. *Merged 5-digit, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS"; followed by "CR/5D"; followed by "MIX COMAIL."

e. *5-digit, required.* Pallet must contain only mail for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for automation flats only under 301.3.0). 5-digit scheme bundles are assigned to 5-digit pallets according to the OEL "label to" 5-digit ZIP Code. Labeling:

1. Line 1: city, State, and 5-digit ZIP Code destination (*see* 8.6.4c for overseas military mail).

2. Line 2: "STD/PER FLTS 5D"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

f. *3-digit, optional,* but not available for bundles for 3-digit ZIP Code prefixes marked "N" in L002. Pallet may contain mail for the same 3-digit ZIP Code or the same 3-digit scheme under L008 (for automation-compatible flats only under 301.3.0). Three-digit scheme bundles are assigned to pallets according to the OEL "label to" 3-digit ZIP Code in L008. Labeling:

1. Line 1: L002, Column A.

2. Line 2: "STD/PER FLTS 3D"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

g. *SCF, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L005. Labeling:

1. Line 1: L002, Column C.

2. Line 2: "STD/PER FLTS SCF"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

h. *ASF, required unless bundle reallocation used under 2.3.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L602. ADC bundles are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L602.

2. Line 2: "STD/PER FLTS NDC"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

i. *NDC, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L601. ADC bundles are assigned to pallets according to the "label to" ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L601.

2. Line 2: "STD/PER FLTS NDC"; followed by "BARCODED" (or "BC"); followed by "MIX COMAIL."

j. *Mixed NDC, required, no minimum.* Pallet may contain carrier route or automation mail. Pallet includes MXD ADC bundles, prepared according to the "label to" ZIP in L009, as appropriate. Unless authorized by the processing and distribution manager, pallet must be entered at the NDC serving the 3-digit ZIP Code of the entry Post Office. Labeling:

1. Line 1: "MXD" followed by the information in L601, for the NDC serving the 3-digit ZIP Code prefix of the entry Post Office.

2. Line 2: "STD/PER FLTS;" followed by "BARCODED" (or "BC"); followed by "WKG;" followed by "MIX COMAIL."

* * * * *

708 Technical Specifications

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7.0 Optional Endorsement Lines (OEL's)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

Sortation Level OEL Example

* * * * *

[Revise Exhibit 7.1.1 to add a new last section to describe additional OEL human-readable text for use with combined mailings of Standard Mail and Periodicals flats as follows:]

Additional Required Human-Readable Text for Use With Combined Mailings of Standard Mail and Periodicals Flats:

* * * * *

5–Digit Scheme SCH 5–DIGIT 12345 MIX COMAIL (and other sortation levels as appropriate)

* * * * *

[Add a new 7.1.8 to described new OEL requirements for mailers combining Standard Mail and Periodicals flats as follows:]

7.1.8 Required OEL Use in Combined Mailings of Standard Mail and Periodicals Flats

Mailers authorized to combine Standard Mail flats and Periodicals flats, under 705.15, must apply an OEL identifying the presort level of the bundle and other applicable information to each mailpiece as specified in 7.1 and the following additional standards:

a. Each OEL must contain the format elements described in 7.2 and must include a "MIX COMAIL" human-readable text, as its most right-justified element.

b. Mailpieces may include LOT information, in accordance with 7.1.7, only when there is sufficient space for the human-readable text in item a and all other required information.

* * * * *

PART 121—[AMENDED]

■ 3. The authority citation for 39 CFR Part 121 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 4. Amend § 121.2 by adding a new paragraph (c) to read as follows:

§ 121.2 Periodicals.

* * * * *

(c) *Combined Periodicals/Standard Mail mailing.* The Postal Service handles combined mailings of Periodicals flats and Standard Mail flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the service standards applicable to Standard Mail in § 121.3.

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–4074 Filed 2–25–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–R07–OAR–2010–0908; FRL–9271–6]

Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE, for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) Including Maximum Achievable Control Technology (MACT) Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The States of Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT standards. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This delegation of authority is effective on February 28, 2011. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324.

Kansas Department of Health and the Environment, Bureau of Air, 1000 SW. Jackson St., Ste. 310, Topeka, Kansas 66612–1367.

Missouri Department of Natural Resources, Air Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102–0176.

Nebraska Department of Environmental Quality, Air Quality Division, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Health Department, Division of Environmental Public Health, Air Quality Section, 3140 "N" Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

Duplicates of required documents must also continue to be submitted to the EPA Regional Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Kramer at (913) 551–7186, or by e-mail at *kramer.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this action do?

The EPA is providing notice of an update to its delegable authority for implementation and enforcement of the Federal standards shown in the tables below to the States of Iowa, Kansas, Missouri, and Nebraska. This action updates the delegation tables previously published at 72 FR 60561 (October 25, 2007). The EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given. This notice does not affect or alter the status of the listed standards under State or Federal law.

What is the authority for delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any State agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes the EPA to delegate authority to any State or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

What does delegation accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective State and local air agencies. However, EPA also retains the concurrent authority to enforce the standards.

What has been delegated?

Tables I, II, and III below list the delegated standards. Each item listed in the Subpart column has two relevant dates listed in each column for each State. The first date in each block is the reference date to the CFR contained in the State rule. In general, the State or local agency has adopted the applicable standard through the date as noted in the table. The second date is the most recent effective date of the State agency rule for which the EPA has granted the delegation. This notice specifically addresses revisions to the columns for Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska.

What has not been delegated?

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority

for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. In such cases, a specific section of the standard details what authorities can and cannot be delegated. You should review the applicable standard in the CFR for this information.

3. In some cases, the State rules do not adopt the Federal standard in its entirety. Each State rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the State agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (*see* Table III), the EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies" from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	03/20/09 11/11/09	07/01/08 11/05/10 Except 60.4; 60.9; 60.10; 60.16.	12/31/08 05/30/10 Except 60.4; 60.9; and 60.10.	06/13/07 07/21/10
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	06/13/07 07/21/10
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	06/13/07 07/21/10
Db	Industrial-Commercial-Institutional Steam Generating Units.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	06/13/07 07/21/10
Dc	Small Industrial-Commercial-Institutional Steam Generating Units.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	06/13/07 07/21/10
E	Incinerators	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
Ea	Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989, and on or before September 20 1994.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
Eb	Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
F	Portland Cement Plants	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
G	Nitric Acid Plants	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
H	Sulfuric Acid Plants	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
I	Hot Mix Asphalt Facilities	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
J	Petroleum Refineries	03/20/09 11/11/09	07/01/08 11/05/10 Except provisions in Ja: 60.100a(c); in 60.101a, the definition of "flare"; 60.102a(g); and 60.107a(d) and (e).	12/31/08 05/30/10	07/01/06 07/21/10
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
Kb	Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
L	Secondary Lead Smelters	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
M	Secondary Brass and Bronze Production Plants	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	03/20/09 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/06 07/21/10

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
O	Sewage Treatment Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
P	Primary Copper Smelters	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
Q	Primary Zinc Smelters	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
R	Primary Lead Smelters	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
S	Primary Aluminum Reduction Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	08/18/08
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
Y	Coal Preparation Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
Z	Ferroalloy Production Facilities	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
BB	Kraft Pulp Mills	03/20/09	07/01/08	12/31/08.	
		11/11/09	11/05/10	05/30/10.	
CC	Glass Manufacturing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
DD	Grain Elevators	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
EE	Surface Coating of Metal Furniture	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
GG	Stationary Gas Turbines	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
HH	Lime Manufacturing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
KK	Lead-Acid Battery Manufacturing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
LL	Metallic Mineral Processing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
MM	Automobile and Light Duty Truck Surface Coating Operations.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
NN	Phosphate Rock Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
PP	Ammonium Sulfate Manufacture	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
QQ	Graphic Arts Industry: Publication Rotogravure Printing	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
RR	Pressure Sensitive Tape and Label Surface Coating Operations.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
SS	Industrial Surface Coating: Large Appliances	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
TT	Metal Coil Surface Coating	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
UU	Asphalt Processing and Asphalt Roofing Manufacture	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
VV/VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
WW	Beverage Can Surface Coating Industry	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
XX	Bulk Gasoline Terminals	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
AAA	New Residential Wood Heaters		07/01/08	12/31/08	07/01/06
			11/05/10	05/30/10	07/21/10

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
BBB	Rubber Tire Manufacturing Industry	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
DDD	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
FFF	Flexible Vinyl and Urethane Coating and Printing	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
GGG	Equipment Leaks of VOC in Petroleum Refineries	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
HHH	Synthetic Fiber Production Facilities	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) AIR Oxidation Unit Processes.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
JJJ	Petroleum Dry Cleaners	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
LLL	Onshore Natural Gas Processing: SO_2 Emissions	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
NNN	Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
OOO	Nonmetallic Mineral Processing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
PPP	Wool Fiberglass Insulation Manufacturing Plants	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
SSS	Magnetic Tape Coating Facilities	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
UUU	Calciners and Dryers in Mineral Industries	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
VVV	Polymeric Coating of Supporting Substrates Facilities	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
WWW	Municipal Solid Waste Landfills	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.	03/20/09	07/01/05	12/31/08	12/01/00
		11/11/09	11/05/10	05/30/10	07/21/10
DDDD	Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.	.....	07/01/05	.....	12/01/00
		.....	11/05/10	.....	07/21/10
EEEE	Other Solid Waste Incineration Units for Which Construction Commenced After December 9, 2004 or Modification or Reconstruction Commenced On or After June 16, 2006.	03/20/09	07/01/08	12/31/08	07/01/06
		11/11/09	11/05/10	05/30/10	07/21/10
FFFF	Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004.	.....	07/01/08	12/31/08	07/01/06
		.....	11/05/10	05/30/10	07/21/10
IIII	Stationary Compression Ignition Internal Combustion Engines.	03/20/09	07/01/08	12/31/08	07/11/06
		11/11/09	11/05/10	05/30/10	07/21/10
JJJJ	Stationary Spark Ignition Internal Combustion Engines	03/20/09	07/01/08	12/31/08.	
		11/11/09	11/05/10	05/30/10.	
KKKK	Stationary Combustion Turbines	03/20/09	07/01/08	12/31/08	07/06/06
		11/11/09	11/05/10	05/30/10	07/21/10

TABLE II—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	05/16/07 06/11/08	07/01/08 11/05/10 Except 61.4, 61.16 and 61.17.	12/31/08 05/30/10 Except 61.4, 61.16 and 61.17.	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
B	Radon Emissions from Underground Uranium Mines.	....	07/01/08. 11/05/10.				
C	Beryllium	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
D	Beryllium Rocket Motor Firing.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
E	Mercury	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
F	Vinyl Chloride	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
L	Benzene Emissions from Coke By-Product Recovery Plants.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
M	Asbestos	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
O	Inorganic Arsenic Emissions From Primary Copper Smelters.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
Q	Radon Emissions From Department of Energy Facilities.	....	07/01/08. 11/05/10.				
R	Radon Emissions From Phosphogypsum Stacks.	....	07/01/08. 11/05/10.				
T	Radon Emissions From the Disposal of Uranium Mill Tailings.	....	07/01/08. 11/05/10.				
V	Equipment Leaks (Fugitive Emission Sources).	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
W	Radon Emissions From Operating Mill Tailings.	....	07/01/08. 11/05/10.				
Y	Benzene Emissions From Benzene Storage Vessels.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
BB	Benzene Emissions From Benzene Transfer Operations.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09
FF	Benzene Waste Operations.	05/16/07 06/11/08	07/01/08 11/05/10	12/31/08 05/30/10	07/01/01 07/21/10	07/01/01 07/16/03	07/01/01 06/30/09

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	12/22/08 11/11/09	07/01/08 11/05/10 Except 63.6(f)(1) and (h)(1); 63.12; 63.13; 63.14(b)(27) and phrase "and table 5 to subpart DDDDD of this part"; and 63.15.	12/31/08 05/30/10 Except 63.13 & 63.15(a)(2).	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
F	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
G	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
H	Organic Hazardous Air Pollutants for Equipment Leaks.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
J	Polyvinyl Chloride and Copolymers Production.	12/22/08 11/11/09	07/01/08. 11/05/10.				
L	Coke Oven Batteries	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
N	Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
O	Ethylene Oxide Emissions Standards for Sterilization Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
Q	Industrial Process Cooling Towers.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
R	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
S	Pulp and Paper Industry.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
T	Halogenated Solvent Cleaning.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
U	Polymers and Resins Group I.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
W	Epoxy Resins Production and Non-Nylon Polyamides Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
X	Secondary Lead Smelting.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
Y	Marine Tank Vessel Loading Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
AA/BB	Phosphoric Acid Manufacturing Plants/ Phosphate Fertilizers Production Plants.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
CC	Petroleum Refineries	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
DD	Off-Site Waste and Recovery Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
EE	Magnetic Tape Manufacturing Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
GG	Aerospace Industry Surface Coating Manufacturing and Rework Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
HH	Oil and Natural Gas Production Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
II	Shipbuilding and Ship Repair (Surface Coating).	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
JJ	Wood Furniture Manufacturing Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
KK	Printing and Publishing Industry.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
LL	Primary Aluminum Reduction Plants.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Along Semichemical Pulp Mills.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
OO	Tanks—Level 1	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
PP	Containers	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
QQ	Surface Impoundments	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
RR	Individual Drain Systems.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
TT	Equipment Leaks—Control Level 1 Standards.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
UU	Equipment Leaks—Control Level 2 Standards.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
VV	Oil-Water Separators and Organic-Water Separators.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
WW	Storage Vessel (Tanks)—Control Level 2.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
YY	Generic Maximum Achievable Control Technology Standards.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
CCC	Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
DDD	Mineral Wool Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
EEE	Hazardous Waste Combustors.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
GGG	Pharmaceutical Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
HHH	Natural Gas Transmission and Storage Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
III	Flexible Polyurethane Foam Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
JJJ	Polymers and Resins Group IV.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
LLL	Portland Cement Manufacturing Industry.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
MMM	Pesticide Active Ingredient Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
NNN	Wool Fiberglass Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
OOO	Manufacture of Amino/Phenolic Resins.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
PPP	Polyether Polyols Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
QQQ	Primary Copper Smelting.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
RRR	Secondary Aluminum Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
TTT	Primary Lead Smelting	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
UUU	Petroleum Refineries ..	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10
VVV	Publicly Owned Treatment Works.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
XXX	Ferroalloys Production	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
AAAA	Municipal Solid Waste Landfills.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
CCCC	Manufacturing of Nutritional Yeast.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
DDDD	Plywood and Composite Wood Products.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
EEEE	Organic Liquids Distribution (Non-Gasoline).	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10
FFFF	Misc. Organic Chemical Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
GGGG	Solvent Extraction for Vegetable Oil Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
HHHH	Wet Formed Fiberglass Mat Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10
IIII	Surface Coating of Automobiles and Light-Duty Trucks.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10
JJJJ	Paper and Other Web Coating.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
KKKK	Surface Coating of Metal Cans.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10
MMMM	Surface Coating of Misc. Metal Parts and Products.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
NNNN	Surface Coating of Large Appliances.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	....	07/01/07 04/13/10

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
OOOO	Printing, Coating and Dyeing of Fabrics and Other Textiles.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
PPPP	Surface Coating of Plastic Parts and Products.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
QQQQ	Surface Coating of Wood Building Products.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
RRRR	Surface Coating of Metal Furniture.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
SSSS	Surface Coating of Metal Coil.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
TTTT	Leather Finishing Operations.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
UUUU	Cellulose Products Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
VVVV	Boat Manufacturing	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
WWWW	Reinforced Plastic Composites Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
XXXX	Rubber Tire Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
YYYY	Stationary Combustion Turbines.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
ZZZZ	Stationary Reciprocating Internal Combustion Engines.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
AAAAA	Lime Manufacturing Plants.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
BBBBB	Semiconductor Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
DDDDD	Industrial, Commercial and Institutional Boilers and Process Heaters.						
EEEEE	Iron and Steel Foundries.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
FFFFF	Integrated Iron and Steel Manufacturing Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
GGGGG	Site Remediation	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
HHHHH	Misc. Coating Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
IIIII	Mercury Cell Chlor-Alkali Plants.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
JJJJJ	Brick and Structural Clay Products Manufacturing.		07/01/08. 11/05/10.				
KKKKK	Clay Ceramics Manufacturing.	12/22/08 11/11/09	07/01/08. 11/05/10.				
LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
MMMMM	Flexible Poly-urethane Foam Fabrication Operation.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
NNNNN	Hydrochloric Acid Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
PPPPP	Engine Test Cells/ Stands.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10	07/01/07 09/28/10	07/01/07 04/13/10
QQQQQ	Friction Materials Manufacturing Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
RRRRR	Taconite Iron Ore Processing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source Category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
SSSSS	Refractory Products Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 05/30/10	07/01/07 07/21/10		07/01/07 04/13/10
TTTTT	Primary Magnesium Refining.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08. 05/30/10.			
WWWWW	Hospital Ethylene Oxide Sterilizer.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	12/28/07 07/21/10	12/28/07 09/28/10	12/28/07 04/13/10
YYYYY	Electric Arc Furnace Steelmaking Facilities or Stainless and Non-stainless Steel Manufacturing (EAFs).	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	12/28/07 07/21/10		12/28/07 04/13/10
ZZZZZ	Iron and Steel Foundries Area Sources.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	01/02/08 07/21/10	01/02/08 09/28/10	01/02/08 04/13/10
BBBBBB	Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	03/07/08 07/21/10	03/07/08 09/28/10	03/07/08 04/13/10
CCCCCC	Gasoline Distribution, Gasoline Dispensing Facilities.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	03/07/08 07/21/10	06/25/08 09/28/10	03/07/08 04/13/10
DDDDDD	PVC & Copolymer Production.	 	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10		07/01/07 06/30/09
EEEEEE	Primary Copper Smelting.	 	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10		07/01/07 06/30/09
FFFFFF	Secondary Copper Smelting.	 	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10		07/01/07 06/30/09
GGGGGG	Primary Nonferrous Metal.	 	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10		07/01/07 06/30/09
HHHHHH	Paint Stripping Operations, Misc. Surface Coating, Autobody Refinishing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	03/09/08 07/21/10	01/09/08 09/28/10	01/09/08 04/13/10
LLLLLL	Acrylic/Modacrylic Fibers Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07. 07/21/10.		
MMMMMM	Carbon Black Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07. 07/21/10.		
NNNNNN	Chromium Compounds	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07. 07/21/10.		
OOOOOO	Flexible Polyurethane Foam Fabrication and Production.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07 07/21/10	07/01/07 09/28/10	
PPPPPP	Lead Acid Battery Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07. 07/21/10.		
QQQQQQ	Wood Preserving	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	07/01/07. 07/21/10.		
RRRRRR	Clay Ceramics Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	12/26/07 07/21/10	12/26/07 09/28/10	12/26/07 04/13/10
SSSSSS	Pressed & Blown Glass Manufacturing.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	12/26/07 07/21/10		12/26/07 04/13/10
TTTTTT	Secondary Non-Ferrous Metals.	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	12/26/07 07/21/10		12/26/07 04/13/10
WWWWWW	Plating and Polishing	12/22/08 11/11/09	07/01/08 11/05/10	12/31/08 *	 	07/01/08. 09/28/10.	
XXXXXX	Metal Fabrication and Finishing.	12/22/08 11/11/09	 	12/31/08 *	 	07/23/08. 09/28/10.	
YYYYYY	Ferroalloys Production	 	 	12/31/08. *			

* At this time, Missouri is temporarily not accepting delegation for area source NESHAP requirements (40 CFR Part 63, Subparts 5W–6Y) within the State of Missouri as described in an August 24, 2010 letter from MDNR to the U.S. EPA, Region 7.

Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned State or local agencies.

This notice informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control,

Reporting and recordkeeping requirements.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Authority

This notice is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: February 16, 2011.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2011–4389 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 177

[Docket No. PHMSA–2010–0221 (HM–256)]

RIN 2137–AE63

Hazardous Materials: Limiting the Use of Electronic Devices by Highway

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is prohibiting texting on electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding or any quantity of a select agent or toxin listed in the Department of Health and Human Services "Select Agents and Toxins" regulations. Additionally, in accordance with requirements adopted on September 27, 2010 by the Federal Motor Carrier Safety Administration (FMCSA), motor carriers are prohibited from requiring or allowing drivers of covered motor vehicles to engage in texting while driving. This rulemaking improves the health and safety on the Nation's highways by reducing the prevalence of distracted driving-related crashes, fatalities, and injuries involving drivers of commercial motor vehicles.

DATES: This final rule is effective March 30, 2011.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time and insert PHMSA–2010–0221 in the "Keyword" box, and then click "Search." You may also view the docket online by visiting the Docket Management Facility in Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ben Supko, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

A. US DOT Strategy

The United States Department of Transportation (US DOT) is leading the effort to end the dangerous practice of distracted driving on our nation's roadways and in other modes of transportation. Driver distraction can be defined as the voluntary or involuntary diversion of attention from the primary driving tasks due to an object, event, or person that shifts the attention away from the fundamental driving task. The US DOT has identified three main types of distraction that occur while operating a motor vehicle:

1. Visual—taking your eyes off of the road;

2. Manual—taking your hands off of the wheel; and

3. Cognitive—taking your mind off of driving.

The US DOT is working across the spectrum with private and public entities to address distracted driving, and will lead by example. The individual agencies of the US DOT are working together to share knowledge, promote a greater understanding of the issue, and identify additional strategies to end distracted driving. Additionally, the majority of the 50 States have forbidden texting while driving any motor vehicle. *See* US DOT Distracted Driving Web site, *http://www.distraction.gov*; *see also* Insurance Institute for Highway Safety Web site, *http://www.iihs.org/*.

B. NPRM

On September 27, 2010, PHMSA proposed to limit the dangerous practice of texting on electronic devices by drivers during the operation of a motor vehicle containing a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a select agent or toxin listed in 42 CFR part 73. PHMSA received one comment in response to the NPRM. Generally, the commenter expresses support for PHMSA's efforts, but requests expansion of the proposed texting limitation to include any person being paid to drive any type of vehicle. Additionally, the commenter suggests that PHMSA prohibit the use of any type of electronic device while driving. The comment is discussed in more detail in the Section-by-Section and Discussion of Comments sections of this final rule.

C. FMCSA Rules and Definitions

1. Final Rule

On September 27, 2010 the Federal Motor Carrier Safety Administration published a final rule to codify requirements to limit the use of wireless communication devices by commercial motor vehicle (CMV) drivers. FMCSA's final rule adopts a prohibition consistent with requirements originally proposed and considers comments submitted in response to the original NPRM issued on April 1, 2010 under Docket FMCSA–2009–0370 (75 FR 16391). The final rule prohibits texting by CMV drivers operating in interstate commerce and imposes sanctions for drivers that fail to comply. Most directly applicable to this final rule, the FMCSA final rule adopts requirements prohibiting texting on electronic devices by drivers transporting a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a select agent or toxin listed in 42 CFR part 73. In the rule FMCSA clearly indicates that its authority to regulate hazardous materials is limited to CMV drivers operating in interstate commerce. Additionally, the FMCSA final rule cites numerous studies evaluating the dangers of various forms of distracted driving.

2. Notice of Proposed Rulemaking

On April 1, 2010, FMCSA published a Notice of Proposed Rulemaking in the **Federal Register** (75 FR 16391). FMCSA reviewed the over 400 public comments submitted in response to the proposed rule. Changes resulting from FMCSA's comment evaluation are fully described in the preamble of the FMCSA final rule published in the **Federal Register** on September 27, 2010 (75 FR 59118; 59125).

3. Definitions

Several terms and corresponding definitions found in the Federal Motor Carrier Safety Regulations (FMCSRs; 49 CFR parts 350–399) are applicable to this final rule. Below we summarize key terms:

a. Section 383.5 indicates that a *commercial motor vehicle* is a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); is designed to transport 16 or more passengers, including the driver; or is of any size and is used in the transportation of hazardous materials as defined in this section.

b. Section 383.5 indicates that an *electronic device* includes, but is not limited to, a cellular telephone; personal digital assistant; pager; computer; or any other device used to input, write, send, receive, or read text.

c. Section 383.5 indicates that *texting* means manually entering alphanumeric text into, or reading text from, an electronic device. *Texting* includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication. *Texting* does not include—reading, selecting, or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call; inputting, selecting, or reading information on a global positioning system or navigation system; or using a device capable of performing multiple functions (*e.g.,* fleet management systems, dispatching devices, smart phones, citizen band radios, music players, *etc.*) for a purpose that is not otherwise prohibited in this part.

d. Section 392.80(c) indicates that *driving* means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

D. PHMSA Distracted Driving Safety Advisory Notice

In support of the US DOT strategy to end distracted driving, PHMSA issued "Safety Advisory Notice: Personal Electronic Device Related Distractions (Safety Advisory Notice No.10–5)" on August 3, 2010 (75 FR 45697) to alert the hazardous materials community to the dangers associated with the use of mobile phones and electronic devices while operating a commercial motor vehicle (CMV; 49 CFR 383.5). In the notice, PHMSA stresses the heightened risk of transportation incidents involving hazardous materials when CMV drivers are distracted by electronic devices. Accordingly, the notice urges motor carriers that transport hazardous materials to institute policies and provide awareness training to discourage the use of mobile telephones and electronic devices by motor vehicle drivers.

E. Studies, Data, and Analysis on Driver Distractions

Distracted driving reduces a driver's situational awareness, decision making, or performance, possibly resulting in a crash, near-crash, or unintended lane departure by the driver. In an effort to understand and mitigate crashes associated with driver distraction, the US DOT has been studying the distracted driving issue with respect to both behavioral and vehicle safety countermeasures. Researchers and writers classify distraction into various categories, depending on the nature of their work. Texting while driving applies to these three types of driver distraction (visual, physical, and cognitive), and thus may pose a considerably higher safety risk than other sources of driver distraction. Below we summarize recommendations, studies, data, and analysis that provide the foundation for this final rule.

1. NTSB Safety Recommendation H–06–27

On November 14, 2004, a motorcoach crashed into a bridge overpass on the George Washington Memorial Parkway in Alexandria, Virginia. This crash was the impetus for a National Transportation Safety Board (NTSB) investigation and subsequent recommendation (Safety Recommendation H–06–27) to FMCSA regarding cell phone use by passenger-carrying CMVs. The NTSB determined that one probable cause of the crash was the use of a hands-free cell phone, resulting in cognitive distraction; therefore, the driver did not "see" the low bridge warning signs.

In a letter to NTSB dated March 5, 2007, FMCSA agreed to initiate a study to assess:

- The potential safety benefits of restricting cell phone use by drivers of passenger-carrying CMVs;
- The applicability of an NTSB recommendation to property-carrying CMV drivers;
- Whether adequate data existed to warrant a rulemaking; and
- The availability of statistically meaningful data regarding cell phone distraction.

Subsequently, the report "Driver Distraction in Commercial Vehicle Operations" was published on October 1, 2009.

2. Driver Distraction in Commercial Vehicle Operations ("the VTTI Study")—Olson *et al.,* 2009 [1]

Under contract with FMCSA, the Virginia Tech Transportation Institute (VTTI) completed its "Driver Distraction in Commercial Vehicle Operations" study [2] and released the final report on October 1, 2009. The purpose of the study was to investigate the prevalence of driver distraction in CMV safety-critical events (*i.e.,* crashes, near-crashes, lane departures, as explained in the VTTI study) recorded in a naturalistic data set that included over 200 truck drivers and 3 million miles of data. The dataset was obtained by placing monitoring instruments on vehicles and recording the behavior of drivers conducting real-world revenue-producing operations. The study found that drivers were engaged in non-driving related tasks in 71 percent of crashes, 46 percent of near-crashes, and 60 percent of all safety-critical events. Tasks that significantly increased risk included texting, looking at a map, writing on a notepad, or reading.

Odds ratios (OR) were calculated to identify tasks that were high risk. For a given task, an odds ratio of "1.0" indicated the task or activity was equally likely to result in a safety-critical event as it was a non-event or

[1] Olson, R.L., Hanowski, R.J., Hickman, J.S., & Bocanegra, J. (2009) Driver distraction in commercial vehicle operations. (Document No. FMCSA–RRR–09–042) Washington, DC: Federal Motor Carrier Safety Administration, August 2010, from *http://www.fmcsa.dot.gov/facts-research/art-public-reports.aspx?*

[2] The formal peer review of the "Driver Distraction in Commercial Vehicle Operations Draft Final Report" was completed by a team of three technically qualified peer reviewers who are qualified (via their experience and educational background) to critically review driver distraction-related research.

baseline driving scenario. An odds ratio greater than "1.0" indicated a safety-critical event was more likely to occur, and odds ratios of less than "1.0" indicated a safety-critical event was less likely to occur. The most risky behavior identified by the research was "text message on cell phone," [3] with an odds ratio of 23.2. This means that the odds of being involved in a safety-critical event are 23.2 times greater for drivers who text message while driving than for those who do not. Texting drivers took their eyes off the forward roadway for an average of 4.6 seconds during the 6-second interval surrounding a safety-critical event. At 55 mph (or 80.7 feet per second), this equates to a driver traveling 371 feet, the approximate length of a football field, including the end zones, without looking at the roadway. At 65 mph (or 95.3 feet per second), the driver would have traveled approximately 439 feet without looking at the roadway. This clearly creates a significant risk to the safe operation of the CMV.

Other tasks that drew drivers' eyes away from the forward roadway in the study involved the driver interacting with technology: Calculator (4.4 seconds), dispatching device (4.1 seconds), and cell phone dialing (3.8 seconds). Technology-related tasks were not the only ones with high visual demands. Non-technology tasks with high visual demands, including some common activities, were: reading (4.3 seconds), writing (4.2 seconds), looking at a map (3.9 seconds), and reaching for an object (2.9 seconds).

The study further analyzed population attributable risk (PAR), which incorporates the frequency of engaging in a task. If a task is done more frequently by a driver or a group of drivers, it will have a greater PAR percentage. Safety could be improved the most if a driver or group of drivers were to stop performing a task with a high PAR. The PAR percentage for texting is 0.7 percent, which means that 0.7 percent of the incidence of safety-critical events is attributable to texting, and thus, could be avoided by not texting.

TABLE 1—ODDS RATIO AND POPULATION ATTRIBUTABLE RISK PERCENTAGE BY SELECTED TASK

Task	Odds ratio	Population attributable risk percentage *
Complex Tertiary ** Task		
Text message on cell phone	23.2	0.7
Other—Complex (*e.g.,* clean side mirror)	10.1	0.2
Interact with/look at dispatching device	9.9	3.1
Write on pad, notebook, *etc.*	9.0	0.6
Use calculator	8.2	0.2
Look at map	7.0	1.1
Dial cell phone	5.9	2.5
Read book, newspaper, paperwork, *etc.*	4.0	1.7
Moderate Tertiary ** Task		
Use/reach for other electronic device	6.7	0.2
Other—Moderate (*e.g.,* open medicine bottle)	5.9	0.3
Personal grooming	4.5	0.2
Reach for object in vehicle	3.1	7.6
Look back in sleeper berth	2.3	0.2
Talk or listen to hand-held phone	1.0	0.2
Eating	1.0	0
Talk or listen to CB radio	0.6	*
Talk or listen to hands-free phone	0.4	*

* Calculated for tasks where the odds ratio is greater than one.
** Non-driving related tasks.

A complete copy of the final report for this study is included in PHMSA Docket PHMSA–2010–0221, available at *http://www.regulations.gov.*

3. Text Messaging During Simulated Driving—Drews, *et al.,* 2009 [4]

This research was designed to identify the impact of text messaging on simulated driving performance. Using a high-fidelity driving simulator, researchers measured the performance of 20 pairs of participants while: (1) Only driving, and (2) driving and text messaging. Participants followed a pace car in the right lane, which braked 42 times, intermittently. Participants were 0.2 seconds slower in responding to the brake onset when driving and text messaging, compared to driving-only. When drivers are concentrating on texting, either reading or entering, their reaction times to braking events are significantly longer.

[3] Although the final report does not elaborate on texting, the drivers were engaged in the review, preparation, and transmission of typed messages via wireless phones.

[4] Drews, F.A., Yazdani, H., Godfrey, C.N., Cooper, J.M., & Strayer, D.L. (Dec. 16, 2009). Text messaging during simulated driving. Salt Lake City, Utah: *The Journal of Human Factors and Ergonomics Society Online First.* Published as doi:10.1177/0018720809353319. Retrieved December 22, 2009, from *http://hfs.sagepub.com/cgi/rapidpdf/0018720809353319?ijkey=gRQOLrGlYnBfc&keytype=ref&siteid=sphfs.*

4. Driver Workload Effects of Cell Phone, Music Player, and Text Messaging Tasks With the Ford SYNC Voice Interface Versus Handheld Visual-Manual Interfaces ("The Ford Study")—Shutko, *et al.,* 2009 [5]

A recent study by Ford Motor Company,[6] involving 25 participants, compared using a hands-free voice interface to complete a task while driving with using personal handheld devices (cell phone and music player) to complete the same task while driving. Of particular interest were the results of this study with regard to total eyes-off-road time when texting while driving. The study found that texting, both sending and reviewing a text, was extremely risky. The median total eyes-off-road time when reviewing a text message on a handheld cell phone while driving was 11 seconds. The median total eyes-off-road time when sending a text message using a handheld cell phone while driving was 20 seconds.

5. The Effects of Text Messaging on Young Novice Driver Performance—Hosking, *et al.,* 2006 [7]

Hosking studied a very different driver population, but obtained similar results. This study used an advanced driving simulator to evaluate the effects of text messaging on 20 young, novice Australian drivers. The participants were between 18 and 21 years old, and they had been driving 6 months or less. Legislation in Australia prohibits hand-held phones, but a large proportion of the participants said that they use them anyway.

The young drivers took their eyes off the road while texting, and they had a harder time detecting hazards and safety signs, as well as maintaining the simulated vehicle's position on the road than they did when not texting. While the participants did not reduce their speed, they did try to compensate for the distraction of texting by increasing their following distance. Nonetheless, retrieving and particularly sending text messages had the following effects on driving:

- Difficulty maintaining the vehicle's lateral position on the road.
- Harder time detecting hazards.
- Harder time detecting and responding to safety signs.
- Up to 400 percent more time with drivers' eyes off the road than when not texting.

6. The Effect of Text Messaging on Driver Behavior: A Simulator Study—Reed and Robbins, 2008 [8]

The RAC Foundation commissioned this report[9] to assess the impact of text messaging on driver performance and the attitudes surrounding that activity in the 17 to 24-year-old driver category. There were 17 participants in the study. The results demonstrated that driving was impaired by texting. Researchers reported that "failure to detect hazards, increased response times to hazards, and exposure time to that risk have clear implications for safety." They reported an increased stopping distance of 12.5 meters, or three car lengths, and increased variability of lane position.

7. Cell Phone Distraction in Commercial Trucks and Buses: Assessing Prevalence in Conjunction With Crashes and Near-Crashes—Hickman [10]

The purpose of this research was to conduct an analysis of naturalistic data collected by DriveCam®. The introduction of naturalistic driving studies that record drivers (through video and kinematic vehicle sensors) in actual driving situations created a scientific method to study driver behavior under the daily pressures of real-world driving conditions. The research documented the prevalence of distractions while driving a CMV, including both trucks and buses, using an existing naturalistic data set. This data set came from 183 truck and bus fleets comprising a total of 13,306 vehicles captured during a 90-day period. There were 8,509 buses and 4,797 trucks. The data sets in the current study did not include continuous data; it only included recorded events that met or exceeded a kinematic threshold (a minimum g-force setting that triggers the event recorder). These recorded events included safety-critical events (*e.g.,* hard braking in response to another vehicle) and baseline events (*i.e.,* an event that was not related to a safety-critical event, such as a vehicle that traveled over train tracks and exceeded the kinematic threshold). A total of 1,085 crashes, 8,375 near-crashes, 30,661 crash-relevant conflicts, and 211,171 baselines were captured in the dataset.

Odds ratios were calculated to show a measure of association between involvement in a safety-critical event and performing non-driving related tasks, such as dialing or texting. The odds ratios show the odds of being involved in a safety-critical event when a non-driving related task is present compared to situations when there is no non-driving related task. The odds ratios for text/e-mail/accessing the Internet tasks were very high, indicating a strong relationship between text/e-mail/accessing the Internet while driving and involvement in a safety-critical event. Very few instances of this behavior were observed during safety-critical events in the current study and even fewer during control events. Although truck and bus drivers do not text frequently, the data suggest that truck and bus drivers who use their cell phone to text, e-mail, or access the Internet are very likely to be involved in a safety-critical event.

E. Existing Texting Prohibitions and Restrictions by Federal, State, and Local Governments

1. Executive Order 13513

The President immediately used the feedback from the DOT Summit on Distracted Driving and issued Executive Order 13513, which ordered that:

> Federal employees shall not engage in text messaging (a) when driving a Government Owned Vehicle, or when driving a Privately Owned Vehicle while on official Government business, or (b) when using electronic equipment supplied by the Government while driving.

The Executive Order is applicable to the operation of CMVs by Federal government employees carrying out their duties and responsibilities, or using electronic equipment supplied by the government. This order also encourages contractors to comply while operating CMVs on behalf of the Federal government.

[5] Shutko, J., Mayer, J., Laansoo, E., & Tijerina, L. (2009). Driver workload effects of cell phone, music player, and text messaging tasks with the Ford SYNC voice interface versus handheld visual-manual interfaces (paper presented at SAE World Congress & Exhibition, April 2009, Detroit, MI). Warrendale, PA: Society of Automotive Engineers International. Available from SAE International at: *http://www.sae.org/technical/papers/2009-01-0786.*

[6] The Engineering Meetings Board has approved this paper for publication. It has successfully completed SAE's peer review process under the supervision of the session organizer. This process requires a minimum of three (3) reviews by industry experts.

[7] Hosking, S., Young, K., & Regan, M. (February 2006). The effects of text messaging on young novice driver performance. Victoria, Australia: Monash University Accident Research Centre, from: *http://www.monash.edu.au/muarc/reports/muarc246.pdf.*

[8] Reed, N. & Robbins, R. (2008). The effect of text messaging on driver behavior: A simulator study. Report prepared for the RAC Foundation by Transport Research Laboratory. From: *http://www.racfoundation.org/files/textingwhiledrivingreport.pdf.*

[9] The work described in this report was carried out in the Human Factors and Simulation group of the Transport Research Laboratory. The authors are grateful to Andrew Parks who carried out the technical review and auditing of this report.

[10] Hickman, J., Hanowski, R., & Bocanegra, J. (2010). Distraction in Commercial Trucks and Buses: Assessing Prevalence and Risk in Conjunction with Crashes and Near-Crashes. Washington, DC: Federal Motor Carrier Safety Administration.

2. Regulatory Guidance

On January 27, 2010, FMCSA published regulatory guidance concerning the applicability of 49 CFR 390.17, Additional equipment and accessories, to any CMV operator engaged in "texting" on an electronic device while driving a CMV in interstate commerce (75 FR 4305). The guidance interpreted § 390.17 as prohibiting texting on electronic devices while driving because it decreases the safety of operations.

3. Federal Railroad Administration

On October 7, 2008, FRA published Emergency Order 26 (73 FR 58702). Pursuant to FRA's authority under 49 U.S.C. 20102 and 20103, the order, which took effect on October 1, 2008, restricts railroad operating employees from using distracting electronic and electrical devices while on duty. Among other things, the order prohibits both the use of cell phones and texting. FRA cited numerous examples of the adverse impact that electronic devices can have on safe operations. These examples included fatal accidents that involved operators who were distracted while texting or talking on a cell phone. In light of these incidents, FRA is imposing restrictions on the use of such electronic devices, both through its order and a rulemaking that seeks to codify the order. In a NPRM published May 18, 2010, FRA proposed to amend its railroad communications regulations by restricting the use of mobile telephones and other distracting electronic devices by railroad operating employees (75 FR 27672).

4. State Restrictions

Texting while driving is prohibited in 30 States and the District of Columbia. A list of States and territories that have taken such actions can be found at the following DOT *Web site: http://www.distraction.gov/state-laws.* Generally, the State requirements are applicable to all drivers operating motor vehicles within those jurisdictions, including CMV operators. Because some States do not currently prohibit texting while driving, there is a need for a Federal regulation to address the safety risks associated with texting by CMV drivers. Generally, State laws and regulations remain in effect and could continue to be enforced with regard to CMV drivers, provided those laws and regulations are compatible with the Federal requirements. This final rule does not affect the ability of States to institute new prohibitions on texting while driving. For more information *see* the Federalism section later in this document.

II. Applicability of This Final Rule

PHMSA's Office of Hazardous Materials Safety is the Federal safety authority for the transportation of hazardous materials by air, rail, highway, and water. Under the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*), the Secretary of Transportation is charged with protecting the nation against the risks to life, property, and the environment that are inherent in the commercial transportation of hazardous materials. The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) are promulgated under the mandate in Section 5103(b) of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) that the Secretary of Transportation "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." Section 5103(b)(1)(B) provides that the HMR "shall govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate." As such, PHMSA strives to reduce the risks inherent to the transportation of hazardous materials in both intrastate and interstate commerce.[11]

The final rule published in the **Federal Register** on September 27, 2010 by FMCSA under Docket FMCSA–2009–0370 incorporates texting restrictions into § 392.80 of the FMCSRs that apply to CMV motor carriers and drivers in interstate commerce. During the coordination process for PHMSA's August 3, 2010 safety advisory notice on distracted driving, PHMSA and FMCSA representatives expressed concern that changes to the FMCSRs regarding distracted driving would only apply to motor carriers and drivers of CMVs that operate in interstate commerce.[12] As such, FMCSA's final rule does not apply to motor carriers and drivers that transport a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 in intrastate commerce.

PHMSA developed its NPRM and this final rule to expand the population of drivers who are prohibited from texting by FMCSA's final rule to include drivers who transport a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 in intrastate commerce. The safety benefits associated with limiting the distractions caused by electronic devices are equally applicable to drivers transporting a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 in intrastate commerce as they are to interstate commerce. The use of an electronic device while driving constitutes a safety risk to the motor vehicle driver, other motorists, and bystanders. As codified by the September 27, 2010 FMCSA final rule, the consequences of texting while driving a CMV can include State and local sanctions, fines, and possible revocation of a commercial driver's license.

III. Discussion of Comments

PHMSA received one comment in response to our September 27, 2010 NPRM. Generally, the commenter expresses support for PHMSA's efforts, but requests expansion of the proposed texting limitation to include any person being paid to drive any type of vehicle. The commenter also suggests that the penalty for failure to obey the prohibition should result in a loss of driving privileges for six months for the first offense and one year for any additional offense. Further, the commenter indicates that if any infraction results in injury to pedestrians or drivers of other vehicles the driver may lose all driving privileges and serve six months for each infraction and up to twenty-three years for each fatality. Additionally, the commenter suggests that PHMSA prohibit the use of any type of electronic device while driving. The comment is discussed and addressed below.

We appreciate the comment and fully understand the concerns the commenter expresses. In regard to the commenter's suggestion that we expand the texting prohibition to include any person being paid to drive any type of vehicle,

[11] The term "intrastate commerce" is trade, traffic, or transportation within a single State. The term "interstate commerce" is trade, traffic, or transportation involving the crossing of a State boundary. Additionally, "interstate commerce" includes transportation originating or terminating outside the state of United States.

[12] In accordance with § 390.3(a) the rules in Subchapter B, including parts 350–399, of 49 CFR are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce. The only FMCSA regulations that are applicable to intrastate operations are: the commercial driver's license (CDL) requirement, for drivers operating commercial motor vehicles as defined in 49 CFR 383.5; controlled substances and alcohol testing for all persons required to possess a CDL; and minimum levels of financial responsibility for the intrastate transportation of certain quantities of hazardous materials and substances.

PHMSA provides the following response. As we discuss in the Applicability of this Final Rule section above, PHMSA's regulatory authority is limited to the transportation of hazardous materials in commerce. Though we see the utility in prohibiting texting by any person being paid to drive any type of vehicle, such a change is outside of the authority granted to PHMSA.

The changes proposed in the September 27, 2010 NPRM are intended to align the HMR with requirements already adopted by the FMCSA to prohibit texting by CMV drivers (*see* the definition of a "commercial motor vehicle" in the **BACKGROUND** section of this final rule). Overall, the provisions in FMCSA's final rule consider over 400 comments submitted in response to its NPRM issued on April 1, 2010 under Docket FMCSA–2009–0370 (75 FR 16391). PHMSA incorporated the changes resulting from FMCSA's evaluation of those comments into its September 27, 2010 NPRM. One key component of the FMCSA definition for a CMV is that it applies to a vehicle of any size that is used in the transportation of "hazardous materials" as defined in § 383.5. To be consistent with the final rule issued by FMCSA we relied on its definition of a "hazardous material" to be the triggering factor for the texting prohibition. The definition for "hazardous materials" provided in the FMCSRs reads as follows:

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

As a result of this decision to promote consistency between the Agencies, we are covering the same population of "hazardous materials" in any size vehicle. Both PHMSA and FMCSA continue to support that approach. Therefore, in this final rule we are adopting the population of covered drivers and materials as proposed in the NPRM. The texting prohibition adopted by this final rule applies to drivers who transport a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

In regard to the commenter's suggestions regarding the penalties for drivers that violate the texting prohibition, PHMSA provides the following response. The FMCSA incorporates disqualification penalties into § 391.15 of the FMCSRs. Generally, a driver who is convicted of violating the prohibition of texting in § 392.80(a) of the 49 CFR is disqualified for 60 days if the driver is convicted of two violations and 120 days if the driver is convicted of three violations of § 392.80(a) of this chapter in separate incidents during any 3-year period. In addition to these penalties, drivers that are convicted of infractions that result in injury to pedestrians or drivers of other vehicles may face criminal penalties.

PHMSA continues to support the penalties established by the September 27, 2010 final rule published by the FMCSA. Therefore, we are adopting the changes to § 177.804 as proposed.

In regard to the commenter's suggestion that PHMSA prohibit the use of any type of electronic device while driving, PHMSA provides the following response. PHMSA and FMCSA are working closely to evaluate the risks associated with other distractions and devices that may cause distracted driving. As such, the Agencies plan to pursue additional restrictions to limit those risks through future regulatory actions.

IV. Section-by-Section

After fully considering the comments received in response to the September 27, 2010 NPRM, PHMSA is adopting the following change, as proposed in the NPRM:

Section 177.804. PHMSA is adding a new paragraph (b) to prohibit texting by any person transporting a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73. For consistency with existing FMCSA requirements PHMSA makes reference to the texting prohibition in § 392.80 of the FMCSRs. Specifically, § 392.80 states that motor carriers and drivers transporting covered materials may not engage in texting while driving. In addition, § 392.80 provides a limited exception for emergency use that allows CMV drivers to text if necessary to communicate with law enforcement officials or other emergency services.

V. Regulatory Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in interstate, intrastate, and foreign commerce.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

PHMSA has determined that this rulemaking action is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, and significant under DOT regulatory policies and procedures because of the substantial Congressional and public interest concerning the crash risks associated with distracted driving, even though the economic costs of the rule do not exceed the $100 million annual threshold.

Executive Orders 12866 and 13563 require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." As discussed throughout this rulemaking, the intent of this final rule is to expand the applicability of FMCSA's requirements and prohibit texting by drivers of motor vehicles that contain a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73. As a result, the population of motor carriers covered by this final rule is comprised of a very small portion of motor carriers operating in intrastate commerce.

PHMSA calculated its affected population by assessing hazmat registration data from the 2010–2011 registration year. This data is collected on DOT form F 5800.2 in accordance with § 107.608(a) of the 49 CFR. Generally, the registration requirements apply to any person who offers for transportation or transports a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR. Additional data collected on form F 5800.2 verify that the person is indeed a carrier, the mode of transportation used, and the US DOT Number.[13] Using this key data from the registration form

[13] The FMCSRs require certain commercial carriers to obtain a US DOT number by filling out DOT form MC–150 (OMB Control Number 2126–0013). Companies that operate commercial vehicles transporting passengers or hauling cargo in interstate commerce must be registered with the FMCSA and must have a US DOT Number. The US DOT Number serves as a unique identifier when collecting and monitoring a company's safety information acquired during audits, compliance reviews, crash investigations, and inspections. FMCSA provides two services for people who need to obtain a US DOT number. The MC–150 form can be downloaded from the FMCSA Web site in PDF form and mailed in; or, they may file electronically via the Web site. Both options are found at the following URL: *http://www.fmcsa.dot.gov/factsfigs/formspubs.htm.*

submissions we can make some assumptions to estimate the number of persons registered that we consider motor carriers subject to this final rule. Based on our analysis of form F 5800.2, 18,841 persons have registered as motor carriers of hazardous materials. Of those 18,841 persons 17,599 included a US DOT Number. Therefore, based on PHMSA's registration data, the difference between persons registered as motor carriers and persons that have obtained a US DOT Number is 1,242 (18,841 − 17,599 = 1,242). PHMSA considers these persons to be intrastate motor carriers. We compared these numbers with the FMCSA Motor Carrier Management Information System (MCMIS).[14] Based on MCMIS data we verified that the 1,242 carriers identified through registration data have not been issued a US DOT Number by FMCSA.

To better define the population of intrastate motor carriers subject to this rulemaking we assessed the data further. Generally, registration data is limited to persons that offer or transport placarded quantities of hazardous materials. Registration data does not include persons that transport a material listed as a select agent or toxin in 42 CFR part 73. In addition, the data includes those intrastate motor carriers that are required to obtain a US DOT Number through their State even if they operate solely in intrastate commerce. FMCSA indicates that 28 States currently require motor carriers to obtain a US DOT Number, regardless if they operate in interstate or intrastate commerce.[15] Based on these assumptions, the number of intrastate carriers identified through hazmat registration data may be underestimated by up to 60% to 70%.

Another assumption that must be considered is that 30 States and the District of Columbia have adopted a broad based ban on texting while driving. As a result, it is likely that 60% of the carriers identified as intrastate carriers are already subject to a ban on texting while driving. Accordingly, this would indicate that the number of intrastate carriers identified as not covered by a texting ban could be overestimated by as much as 60%.

Based on the assumptions outlined above, and PHMSA's desire to take a conservative approach to the affected population, we multiply the number of intrastate carriers identified through registration data by a 20% underreporting factor. This will result in a total population affected by this rulemaking of 1,490 intrastate motor carriers (1,242 × 1.20 = 1,490). In addition to the number of intrastate motor carriers, PHMSA estimates that each intrastate motor carrier employs approximately 8 drivers. Therefore, the estimated population of intrastate motor carrier drivers affected by this final rule is 11,920 (1,490 × 8 = 11,920). This conservative estimate ensures that PHMSA is fully considering the impacts of expanding applicability of the FMCSA requirements prohibiting texting by drivers of motor vehicles that contain a quantity of hazardous materials requiring placarding under part 172 of the 49 CFR or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

The regulatory evaluation prepared in support of this rulemaking considers the following potential costs: (a) Loss in carrier productivity due to time spent while parking or pulling over to the side of the roadway to perform texting activities; (b) increased fuel usage due to idling as well as exiting and entering the travel lanes of the roadway; and (c) increased crash risk due to covered CMVs that are parked on the side of the roadway and exiting and entering the travel lanes of the roadway. The regulatory evaluation also considers potential costs to the States. However, since the analysis does not yield appreciable costs to the States, further analysis pursuant to the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) was deemed unnecessary.

PHMSA estimates that this final rule will cost $5,227 annually. Additionally, PHMSA has not identified a significant increase in crash risk associated with drivers' strategies for complying with this final rule. As indicated in the regulatory evaluation, a crash resulting in property damage only (PDO) averages approximately $17,000 in damages. Consequently, the texting prohibition would have to eliminate just one PDO crash every 3.25 years for the benefits of this final rule to exceed the costs. A summary of the costs and threshold analysis is provided in the following table:

SUMMARY OF COSTS AND THRESHOLD ANALYSIS

Cost of Lost Carrier Productivity	$438.
Cost of Increased Fuel Consumption.	$3,411.
Cost of Parking, Entering and Exiting Roadway Crashes.	$1,378.
Total Costs (annual)	$5,227.
Benefit of Eliminating One Fatality.	$6 million.
Break-even Number of Lives Saved.	< 1.

The productivity losses, as well as other costs, were estimated for only one year, as the entire threshold analysis was performed as an undiscounted annual estimation. The loss of productivity is expected to diminish (but not necessarily vanish within one year), as the motor carrier industry adjusts to the texting restriction and as new (permissible) technologies arise that compensate for the loss of the texting functionality. PHMSA is unaware of the specific future technologies that might arise, but we continue to research and monitor technological changes in the market.

C. Executive Order 13132

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. In the NPRM, PHMSA invited State and local governments to comment on the effect that the adoption of this rule may have on State or local safety or environmental protection programs. PHMSA did not receive any comments in response to that request.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian Tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the

[14] MCMIS contains information on the safety fitness of commercial motor carriers (truck & bus) and hazardous material shippers subject to both the FMCSRs and the HMR. This information is available to the general public through the MCMIS Data Dissemination Program.

[15] "What is a USDOT Number?" *See:http://www.fmcsa.dot.gov/registration-licensing/registration-USDOT.htm.*

regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and 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. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

PHMSA has conducted an economic analysis of the impact of this final rule on small entities and certifies that a Regulatory Flexibility Analysis is not necessary because the rule will not have a significant economic impact on a substantial number of small entities subject to the requirements of this final rule. We assume that all of the 1,490 motor carriers identified by this final rule are small entities. However, the direct costs of this rule that small entities may incur are only expected to be minimal. They consist of the costs of lost productivity from foregoing texting while on-duty and fuel usage costs for pulling to the side of the road to idle the truck or passenger-carrying vehicle to send or receive a text message. The majority of motor carriers are small entities. Therefore, PHMSA will use the total cost of this final rule ($5,227) applied to the number of small entities (1,490) as a worse case evaluation which would average $3.51 annually per carrier.

F. Executive Order 13272 and DOT Regulatory Policies and Procedures

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rulemakings on small entities are properly considered.

G. Paperwork Reduction Act

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

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates, under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $140.8 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477 through 19478) or you may visit *http://www.dot.gov.* This rule is not a privacy-sensitive rulemaking because the rule will not require any collection, maintenance, or dissemination of Personally Identifiable Information (PII) from or about members of the public.

K. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. PHMSA's assessment did not reveal any significant positive or negative impacts on the environment expected to result from the rulemaking action. There could be minor impacts on emissions, hazardous materials spills, solid waste, socioeconomics, and public health and safety. In the NPRM PHMSA invited interested parties to comment on the potential environmental impacts of regulations applicable to texting while driving. PHMSA did not receive any comments in response to that request.

List of Subjects in 49 CFR part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 1. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 2. Section 177.804 is amended by:
■ a. Designating the existing text as paragraph (a);
■ b. Adding a heading to the newly designated paragraph (a); and
■ c. Adding a new paragraph (b) to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

(a) *General.* * * *

(b) *Prohibition against texting.* In accordance with § 392.80 of the FMCSRs a person transporting a quantity of hazardous materials requiring placarding under 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73 may not engage in, allow, or require texting while driving.

Issued in Washington, DC, on February 17, 2011, under authority delegated in 49 CFR part 106.

Cynthia L. Quarterman,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–4273 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA245

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, February 26, 2011, until 12:01 a.m., local time, April 1, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish

(king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, by filing a notification with the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1,040,625 lb (472,000 kg) for Gulf group king mackerel in the Florida east coast subzone will be reached on February 26, 2011. Accordingly, the commercial sector for king mackerel in the Florida east coast subzone is closed at 12:01 a.m., local time, February 26, 2011, until 12:01 a.m., local time, April 1, 2011.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25′N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the Florida east coast subzone to commercial king mackerel fishing constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment on this action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4365 Filed 2–23–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XA237

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2011 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 27, 2011, through 1200 hrs, A.l.t., March 10, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 10, 2011.

ADDRESSES: Send comments to James W. Balsiger, Regional Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XA237, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

NMFS closed directed fishing for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 23, 2011 (76 FR 4082, January 24, 2011).

As of February 16, 2011, NMFS has determined that approximately 4,693 metric tons of pollock remain in the directed fishing allowance for pollock in Statistical Area 610 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2011 TAC of pollock in Statistical Area 610 of the GOA, NMFS is terminating the previous closure and is reopening directed fishing pollock in Statistical Area 610 of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 610 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the pollock fishery in Statistical Area 610 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 15, 2011.

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

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 10, 2011.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4366 Filed 2–23–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XA252

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Bering Sea subarea and Eastern Aleutian district (BS/EAI) of the Bering Sea and Aleutian Island management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the A season allowance of the 2011 Atka mackerel total allowable catch (TAC) in these areas allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 2011, through 1200 hrs, A.l.t., June 10, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The A season allowance of the 2011 Atka mackerel TAC, in the BS/EAI, allocated to vessels participating in the BSAI trawl limited access fishery was established as a directed fishing allowance of 1,429 metric tons by the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010) and inseason adjustment (76 FR 1539, January 11, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the BS/EAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in the BS/EAI for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 22, 2011. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–4367 Filed 2–23–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 39
Monday, February 28, 2011

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 51, and 54

[NRC–2008–0415]

RIN 3150–AI43

Amendments to Adjudicatory Process Rules and Related Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its adjudicatory rules of practice. This proposed rule would make changes to the NRC's adjudicatory process that NRC believes will promote fairness, efficiency, and openness in NRC adjudicatory proceedings. This proposed rule would also correct errors and omissions that have been identified since the major revisions to the NRC's Rules of Practice in early 2004.

DATES: Comments on the proposed rule must be received on or before May 16, 2011. Comments received after this date will be considered if it is practical to do so. However, the NRC is able to ensure consideration only of comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2008–0415 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, *see* Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0415. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (*telephone:* 301–415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–8579, *e-mail: Tison.Campbell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

Federal rulemaking Web site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by

searching on Docket ID NRC–2008–0415.

II. Background

In a final rulemaking published in the **Federal Register** on January 14, 2004, 69 FR 2181 (2004 part 2 revisions), the NRC substantially modified its rules of practice governing agency adjudications—Title 10 of the *Code of Federal Regulations* (10 CFR) part 2. Portions of 10 CFR parts 1, 50, 51, 52, 54, 60, 63, 70, 72, 73, 75, 76 and 110 also were amended at that time. On May 11, 2004 (69 FR 25997), the NRC corrected errors in 10 CFR part 2, Appendix D.

Since the new rules of practice became effective, provisions requiring correction or clarification of ambiguities, and several areas where further improvements could be achieved, have been identified. Therefore, the NRC is publishing this proposed rule to solicit public comments on proposed corrections of those errors and proposed improvements to the rules governing its adjudicatory proceedings. Participants in NRC adjudicatory proceedings who will use these rules should note that several revisions to 10 CFR part 2 also were adopted in recent years:

- Licenses, Certifications, and Approvals for Nuclear Power Plants (72 FR 4935; August 28, 2007) (Part 52 Rule);
- Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007) (E-Filing Rule);
- Limited Work Authorizations for Nuclear Power Plants (72 FR 57415; October 9, 2007);
- Delegated Authority To Order Use of Procedures for Access to Certain Sensitive Unclassified Information (73 FR 10978; February 29, 2008);
- Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information (73 FR 12627; March 10, 2008); and
- Protection of Safeguards Information (73 FR 63545; October 24, 2008).

III. The Decision To Issue a Proposed Rule

The amendments in this proposed rulemaking are procedural rules exempt from the notice and comment requirements of the Administrative Procedure Act (APA) and NRC regulations. 5 U.S.C. 553(b)(3)(A) and 10 CFR 2.804(d)(1). Nonetheless, the NRC is issuing this rulemaking as a proposed rule for public comment in order to benefit from stakeholder input.

IV. Effectiveness of the Final Rule

The new and amended requirements in the final rule would not be retroactively applied to presiding officer determinations and decisions issued prior to the effective date of the final rule (*e.g.,* a presiding officer order in response to a petition or motion), nor would these requirements be retroactively imposed on parties, such that a party would have to compensate for past activities that were accomplished in conformance with the requirements in effect at the time, but would no longer meet the new or amended requirements in the final rule. Further, in ongoing adjudicatory proceedings if there is a dispute over an adjudicatory obligation or situation arising prior to the effective date of the new rule, such disputes would be governed by the former rule provisions. However, the new or amended requirements would be effective and govern all obligations and disputes that arise after the effective date of the final rule. For example, if a Board issues, prior to the effective date of the final rule, a scheduling order incorporating by reference § 2.336(d), which requires parties to update their disclosures every 14 days, that obligation would change to 30 days once the effective date of the rule is reached. Therefore, Licensing Boards should be aware of the effectiveness of the final rule and take the necessary steps to notify parties of their obligations once the final rule becomes effective.

V. Discussion of Changes and Corrections of Errors

A. Part 2—Title

The current title of 10 CFR part 2, Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders, does not accurately reflect the scope, nor does it track the language of the APA. The NRC is proposing a new title for 10 CFR part 2: Agency Rules of Practice and Procedure, which would better reflect the scope of its subparts and would mirror the language of the APA.

B. Subpart C—Sections 2.300 Through 2.390

1. Section 2.305—Service of documents; methods; proof.

Section 2.305(c)(4) currently refers to "any paper," which could be interpreted to exclude electronic documents filed through the NRC's E-Filing system. The NRC is therefore proposing to clarify that a signed certificate of service must be included with "any document" served upon the parties in a proceeding under 10 CFR part 2. Under this rule, the certificate of service must include the name and address of each person upon whom service is being made (which for electronic submissions under the E-Filing system should include, at a minimum, the name and e-mail address used for service of each person in the E-Filing system service list for a proceeding upon whom service needs to be made) and the date and method of service. Because it is the responsibility of a participant submitting a document to the E-Filing system to comply with the service requirements, a certificate of service that simply states the document is being served "per the service list in the E-Filing system" without listing the names and addresses of each of those being served is insufficient to comply with § 2.305(c)(4). The NRC notes that § 2.304 requires that electronic documents be signed using a participant's digital certificate; in such circumstances it is not necessary to submit an electronic copy of the document that includes an actual signature.

Paragraph 2.305(g)(1) does not currently provide an address for service upon the NRC staff when a filing is not being made through the E-Filing system and no attorney representing the NRC staff has filed a notice of appearance in the proceeding. The proposed paragraph (g)(1) would provide addresses to be used to accomplish service on the NRC staff in these circumstances.

2. Section 2.309—Hearing requests, petitions to intervene, requirements for standing, and contentions.

Section 2.309 contains the generally applicable procedures for requesting hearings and submitting petitions to intervene in NRC proceedings, and sets forth the requirements for submitting contentions and establishing legal standing to participate in NRC proceedings. The NRC is proposing to make several changes to § 2.309.

a. *Section 2.309(b)—Timing.*

Section 2.309(b)(5) currently references orders issued under § 2.202, but does not reference notices of violation imposing a civil penalty issued under § 2.205. Section 2.205 notices of violation, like § 2.202 orders, provide "twenty (20) days * * * or other time specified in the notice" for individuals to file an answer. This provision does not match the 60 days allowed by § 2.309(b), which could be interpreted as applying to § 2.205 notices of violation. The proposed § 2.309(b)(5) would correct this omission by adding a reference to § 2.205 to reflect that notices of violation issued in § 2.205 civil penalty proceedings have timing requirements similar to those of § 2.202 orders.

b. *Sections 2.309(c) and (f)—Subsequent Submission of Petition/Request or New or Amended Contentions.*

Current § 2.309(c)(1) contains eight balancing factors that determine whether to grant or admit "nontimely" hearing requests, intervention petitions, or contentions. These factors include the three factors for standing—also found at § 2.309(d)(1)(ii) through (iv)—and the following five factors: Good cause for the failure to file on time; the availability of other means to protect the requestor's or petitioner's interest; the extent to which the requestor's or petitioner's interest will be represented by other parties; the extent to which the requestor's or petitioner's interest will broaden the issues or delay the proceeding; and the extent to which the requestor's or petitioner's participation may reasonably be expected to assist in developing a sound record. The "good cause" factor is given the most weight, and "[i]f a petitioner cannot show good cause, then its demonstration on the other factors must be 'compelling.'" *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI–05–24, 62 NRC 551, 564–65 (2005) (footnote with citation omitted).

Good cause is not defined in the regulations, but has been defined by the NRC in case law as a showing that the petitioner "not only * * * could not have filed within the time specified in the notice of opportunity for hearing, but also that it filed as soon as possible thereafter." *Id.* In addition, § 2.309(f)(2) identifies three factors to be considered in determining whether to admit a new or amended contention. These factors include whether the new or amended contention is based on information that was not previously available. For example, if a document has not been prepared and is referred to as a forthcoming document, the appropriate time to file a contention based upon the document is after its publication. The two remaining factors in § 2.309(f)(2) include whether the information that was not previously available is materially different from information that was previously available, and whether the new or amended contention has been submitted in a timely fashion after the availability of the new information. The § 2.309(f) three factor test appears to be a specific application of the case law definition of "good cause."

Thus, in practice, the admissibility of late-filed contentions usually depends on whether good cause is found. A showing that many of the other factors support the admission of a late-filed contention is rarely sufficient to overcome a lack of good cause. *See, e.g., Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP–00–28, 52 NRC 226, 239–240 (2000) and *Tennessee Valley Authority* (Watts Bar Nuclear Plant, Unit 2), CLI–10–12, __ NRC __ (Mar. 26 2010) (slip op.) (the Commission noted that "it would be a rare case where we would excuse a non-timely petition absent good cause") *Id.* at 2. And in other cases, the NRC's determination on the existence of good cause appears to turn on one or two factors unique to that proceeding, with a generic recitation or cursory acknowledgement of the other factors and how they offset each other. *See, e.g., Crow Butte Resources* (North Trend Expansion Project) LBP–08–06, 67 NRC 241, 259–260 (2008).

The proposed rule would simplify the requirements governing requests for hearing, intervention petitions, or new or amended contentions filed after the deadlines in § 2.309(b) by: (1) Making good cause the sole factor to be considered when evaluating whether to review the admissibility of a new or amended contention, petition, or hearing request; (2) defining good cause as those factors currently in § 2.309(f)(2)(i) through (iii); (3) adding clarifying information regarding the need to address interest and standing; and (4) referring to "nontimely" contentions as "new or amended." Although we would no longer use the terms "late-filed" or "nontimely" and would use the term "new or amended" to refer to contentions filed after the initial filing date for contentions had expired, the current NRC case law would continue to be applied in ruling on those requests.

The proposed amendments to § 2.309 would apply the good cause factor to all filings after the initial filing deadline and would adopt the current § 2.309(f)(2)(i) through (iii) factors as the standards to be applied when evaluating whether good cause exists. This change would simplify the review of filings after the deadlines in § 2.309(b). These changes would allow the parties, participants, and the presiding officer to focus their resources on the most relevant questions related to the admissibility of new or amended contentions (*i.e.,* whether good cause exists and whether the contentions meet the admissibility requirements of § 2.309(f)).

Section 2.309(c)(1) would require a requestor or petitioner to provide a justification supporting the filing after the deadlines in § 2.309(b), consisting of "good cause" as defined in § 2.309(c)(2). Paragraph (c)(2) would treat the three criteria for considering new or amended contentions that are currently contained in paragraph (f)(2) as the factors that must be considered under the good cause determination of proposed paragraph (c)(1). The NRC believes that the factors in current § 2.309(f)(2)(i) through (iii) are a useful, specific application of "good cause." Presiding officers should evaluate whether a filing after the deadlines in § 2.309(b) satisfies the factors in § 2.309(c)(2)(i) through (iii) to determine whether a petitioner has demonstrated good cause.

Proposed paragraph (c)(3) would make clear that, apart from demonstrating good cause, a petitioner seeking admission to the proceeding after the deadlines in § 2.309(b) would need to satisfy standing and contention admissibility requirements. Paragraph (c)(4) would apply to a participant or a party who seeks admission of a new or amended contention, and who has already satisfied the standing requirements in § 2.309(d).

This revision would, in part, adopt a line of reasoning first proposed by an Atomic Safety and Licensing Board in the Vermont Yankee power uprate proceeding; the Board concluded that new or amended contentions filed after the initial filing need not satisfy the § 2.309(c)(1) factors if the § 2.309(f)(2)(i) through (iii) factors are met. *Entergy Nuclear Vermont Yankee LLC* (Vermont Yankee Nuclear Power Station), LBP–05–32, 62 NRC 813 (2005). The NRC believes that this should be the appropriate standard for presiding officers to apply when evaluating whether good cause exists.

The NRC invites comments on the effect (if any) of eliminating the other late-filing factors and relying solely on good cause. As discussed above, case law has shown that good cause is given the most weight when evaluating new or amended contentions, and absent good cause, the other factors must be—but are rarely found to be—compelling. Would limiting the late-filing criteria to good cause have a detrimental effect on a petitioner's ability to have new or amended contentions admitted? How often, without showing good cause, have petitioners been able to rely on the other factors to meet the requirements of § 2.309(c)? Should the NRC consider removing only some of the other late-filing requirements? If so, which ones?

c. *Section 2.309(d)—Standing.*

Section 2.309(d) sets forth the standing requirements and also contains some requirements that do not generally relate to standing. To clarify and to better articulate the generally applicable standing requirements, several revisions to § 2.309(d) are being proposed. The

general standing criteria in § 2.309(d)(1) would remain the same. A revised § 2.309(d)(2) would adopt the requirements of the first sentence of current § 2.309(d)(3), which requires the presiding officer to consider the paragraph (d)(1) factors when determining whether the petitioner has an interest affected by the proceeding. Revised paragraph (d)(3) would retain the existing provision that in enforcement proceedings the licensee or other person against whom the action is taken is deemed to have standing. Current § 2.309(d)(2) contains special requirements for States, local governmental bodies, and Federally-recognized Indian Tribes that seek status as parties in proceedings. But some of these requirements (*e.g.,* the need to propose one or more contentions; the need to designate a single representative) do not relate to standing. The present § 2.309(d)(2) provisions would be revised and would be moved to a new § 2.309(h), which is discussed in the next section.

d. *Section 2.309(d)(2) moved to 2.309(h)—State, local governmental body, and Federally-recognized Indian Tribe.*

As stated, the present § 2.309(d)(2) provisions for government participation, which do not contain generally applicable standing requirements like the rest of § 2.309, would be revised and moved to a new § 2.309(h). The proposed § 2.309(h)(1), based on the existing § 2.309(d)(2)(i), would require any State, local governmental body or Federally-recognized Indian Tribe seeking to participate as a party to submit at least one admissible contention. This section would also include the requirement that each governmental entity designate a single representative for the hearing. If a request for hearing or petition to intervene were granted, the NRC would admit as a party a single designated representative of the State, a single designated representative for each local governmental body (county, municipality, or other subdivision), and a single designated representative for each Federally-recognized Indian Tribe, as applicable. This proposed section would also require, as provided in the statement of considerations for the 2004 part 2 revisions, that:

> Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate potential parties. Each must separately satisfy the relevant contention requirement, and each must designate its own representative (that is, the Governor must designate a single representative, and the State official must separately designate a representative). (69 FR 2182, 2222; January 14, 2004).

The proposed § 2.309(h)(2) would be based on the existing § 2.309(d)(2)(ii), which states that in any potential proceeding for a facility (the term "facility" is defined in § 2.4) located within its boundaries, the State, local governmental body or Federally-recognized Indian Tribe seeking party status need not further establish its standing. As revised, proposed § 2.309(h)(1) and (h)(2) would delete the word "affected" from the phrase "Federally-recognized Indian Tribe." The use of "affected" in this context is proper only in a high-level radioactive waste disposal proceeding. For the same reason, the NRC proposes to remove "affected" from § 2.315(c) (regarding interested government participation) and from the definition of "Participant" added to § 2.4 in the E–Filing Rule (August 28, 2007; 49139, 49149). Existing § 2.309(d)(2)(iii) would be redesignated as § 2.309(h)(3).

e. *Section 2.309(h) moved to 2.309(i)—Answers to requests for hearing and petitions to intervene; Replies to answers.*

The present § 2.309(h), governing the filing of answers and replies to hearing requests and petitions to intervene, would be redesignated as § 2.309(i) and would be further revised. The current § 2.309(h)(1) refers to "proffered contentions," the preamble of current § 2.309(h) limits paragraph (h) to filing deadlines for hearing requests and intervention petitions, and there is no clear reference to contentions submitted after the initial filing. The NRC believes that the same deadlines should apply to answers and replies for new or amended contentions as apply to intervention petitions and hearing requests filed after the deadlines in § 2.309(b). The NRC is therefore proposing to amend this section to include answers and replies to requests to admit new or amended contentions after the initial filing. Because this change would cover all filings after the deadlines in § 2.309(b), the reference to "proffered contentions" in paragraph (h)(1) (proposed paragraph (i)(1)) would no longer be necessary and would be removed. The reference in current paragraph (h)(1) to "paragraphs (a) through (g)" would be changed to "paragraphs (a) through (h)" due to the addition of proposed new paragraph (h).

f. *Section 2.309(i) moved to new 2.309(j)—Decision on request/petition.*

The current § 2.309(i) would be redesignated as § 2.309(j). The redesignated § 2.309(j) would contain a new citation reference made necessary by the new § 2.309(h). Also, proposed § 2.309(j) would be revised to provide that if the presiding officer cannot issue a decision on each request for hearing or petition to intervene within 45 days of the conclusion of the pre-hearing conference, the presiding officer shall issue a notice advising the Commission and the parties as to when the decision will issue. If no pre-hearing conference is conducted, the 45-day period begins after the filing of answers and replies under § 2.309(i).

3. Section 2.311—Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

Section 2.311(b) allows parties to appeal orders of the presiding officer to the Commission concerning a request for hearing, petition to intervene, or a request to access SUNSI or SGI within ten days after the service of the order. Any party who opposes the appeal may file a brief in opposition within ten days after service of the appeal. Experience has demonstrated that the filing time provided under this section is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore proposing to extend the time to file an appeal and a brief in opposition to an appeal from ten to 25 days. The NRC does not expect the proposed change in appeal deadlines to result in any delays in licensing. For one thing, higher-quality briefs should expedite appellate decision-making. Moreover, most of the appellate litigation at the NRC is preliminary to any final licensing decisions; it takes place before the NRC staff finishes its safety and environmental reviews and generally does not affect the timing of those reviews.

4. Section 2.314—Appearance and practice before the Commission in adjudicatory proceedings.

Paragraph 2.314(c)(3) allows anyone disciplined under § 2.314(c) to file an appeal with the Commission within ten days after issuance of the order. Experience since the 2004 revisions of part 2 has demonstrated that ten days frequently is not adequate for parties to prepare quality appeals. The NRC is therefore proposing to extend the time to file an appeal of an order disciplining

a party from ten to 25 days. The NRC believes that extending the time for appeals will result in higher-quality appeals.

5. Section 2.315—Participation by a person not a party.

Current § 2.315(c) allows interested State, local governmental bodies, and Federally-recognized Indian Tribes that have not been admitted as parties under § 2.309 a reasonable opportunity to participate in hearings. The NRC is proposing to amend § 2.315(c) to clarify that States, local governmental bodies, or Federally-recognized Indian Tribes that are allowed to participate in hearings take the proceeding as they find it, consistent with longstanding NRC case law. *See, e.g., Pacific Gas and Electric Co.* (Diablo Canyon Nuclear Power Plant, Units 1 and 2), ALAB–600, 12 NRC 3, 8 (1980); *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), LBP–83–13, 17 NRC 469, 471–72 (1983), citing 10 CFR 2.714(c) (current 2.315(c)); *Cincinnati Gas and Electric Co.* (Wm. H. Zimmer Nuclear Station), LBP–80–6, 11 NRC 148, 151 (1980).

6. Section 2.319—Power of the presiding officer.

As part of the 2004 revisions to part 2, the NRC eliminated "redundant or duplicate provisions in Subpart J that would be covered by the generally applicable provisions in Subpart C" (69 FR 2212; January 14, 2004). Section 2.319(l) would be updated to clarify the scope of the power of the presiding officer to refer rulings or certify questions to the Commission, consistent with the change to § 2.323, discussed in the next section.

7. Section 2.323—Motions.

The NRC proposes to amend § 2.323(f) to clarify the criteria for referrals in this paragraph, and to make the referral criteria consistent with the Commission's standards for consideration of such referrals. The criterion on "prompt decision * * * necessary to prevent detriment to the public interest or unusual delay or expense" would be removed to make clear that this criterion concerns the prompt decision *of the Commission.* The second criterion on "the decision or ruling involves a novel issue that merits Commission review" would be revised to make clear that: (1) This criterion concerns the *presiding officer's* decision, and (2) the presiding officer's decision must raise or create "significant and novel" issues that may be either "legal or policy" in nature.

8. Section 2.335—Consideration of Commission rules and regulations in adjudicatory proceedings.

Section 2.335 details the procedures through which a challenge to the Commission's regulations may be raised as part of an adjudicatory proceeding. The current text of the rule limits these challenges to "a party to an adjudicatory proceeding," which would seem to exclude petitioners from challenging the Commission's regulations. The Commission recognizes that challenges to the Commission's regulations are frequently contained in petitions to intervene and requests for hearing. Further, the Commission recognizes that petitioners may have a legitimate interest in raising such challenges before they are granted party status and that Atomic Safety and Licensing Boards have allowed petitioners to raise these concerns before being admitted as parties. *See, e.g., Carolina Power and Light Co.* (Shearon Harris Nuclear Power Plant, Unit 1), LBP–07–11, 66 NRC 41, 57–58 (2007).

> Also, a contention that challenges any Commission rule is outside the scope of the proceeding because, absent a waiver, 'no rule or regulation of the Commission * * * is subject to attack * * * in any adjudicatory proceeding.' Similarly, any contention that amounts to an attack on applicable statutory requirements must be rejected by a licensing board as outside the scope of the proceeding. A petitioner may, however, within the adjudicatory context submit a request for waiver of a rule under 10 CFR 2.335, and outside the adjudicatory context file a petition for rulemaking under 10 CFR 2.802 or a request that the NRC Staff take enforcement action under 10 CFR 2.206. *Id.* (citations omitted).

The NRC is therefore proposing to amend this section to clarify that, in accordance with NRC practice, "participants to an adjudicatory proceeding," not just parties, may seek a waiver or an exception for a particular proceeding.

9. Section 2.336—General Discovery.

Section 2.336(d) currently requires parties to update their mandatory disclosures every 14 days. Experience with adjudications since early 2004 has demonstrated that the current disclosure provisions are much more burdensome for litigants than was initially anticipated. Part of the burden is the frequency of required updates to the mandatory disclosures. The NRC is therefore proposing to replace the requirement to disclose information or documents within 14 days of discovery with a continuing duty to provide a disclosure update every 30 days. The Commission is also considering an alternative timeline to the proposed rule for disclosure updates. Like the proposed rule, this approach would require disclosure updates every thirty days, but, as specified hearing milestones approach, this would mirror the 14-day disclosure requirements of the current version of § 2.336(d). This hearing-sensitive timeline would mitigate the burdens of the current rule, while preserving the utility of more frequent disclosure updates as hearing milestones approach.

Each update under the proposed versions of § 2.336(d) would include documents subject to disclosure under this section that have not been disclosed in a prior update and that are developed, obtained, or discovered during the period that runs from five business days before the last disclosure update to five business days before the filing of the update. It is anticipated that this change to § 2.336(d) would reduce the burden and increase the robustness of updated disclosures. The NRC also proposes to add a sentence to the end of § 2.336(d), stating that the duty of mandatory disclosure with respect to new information or documents relevant to a contention ends when the presiding officer issues a decision on that contention, or when otherwise specified by the presiding officer or the Commission.

10. Section 2.340—Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

Sections 2.340(a) and (b) currently imply that the presiding officer must reach a decision prior to the issuance of a license or license amendment. But this is not necessarily the case. For operating licenses associated with production and utilization facilities, both the Atomic Energy Act and the NRC's regulations allow for the issuance of a license amendment upon a determination of "no significant hazards consideration." *See, e.g.,* 42 U.S.C. 2239, 10 CFR 50.91. Further, subparts L and N of 10 CFR part 2 allow the staff to act on an application, including an application for an initial or renewed operating license or operating license amendment, and in proceedings for an initial license or license amendment not involving a production and utilization facility, prior to the completion of any contested hearing, assuming that all other relevant regulatory requirements are met. 10 CFR 2.1202(a), 2.1210(c)(3), and 2.1403(a). The NRC is proposing to revise § 2.340 to clarify that production and utilization facility applications—for an initial license, a renewed license, or a license amendment where the NRC has made a determination of no significant hazards consideration—could be acted upon prior to the completion of a contested hearing. The NRC also would make conforming amendments to paragraphs

(d) and (e) of this section to clarify that in proceedings involving a manufacturing license under subpart C of 10 CFR part 52, and in proceedings not involving production and utilization facilities, the NRC staff—provided it is able to make all of the necessary findings associated with the licensing action—may act on a license, permit, or license amendment prior to the completion of a contested hearing.

Finally, this section would be amended to clarify that the presiding officer could make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental or common defense and security matter exists, and only to the extent the Commission, upon a required referral by the presiding officer, approves an examination of and decision on the referred matters.

11. Section 2.341—Review of decisions and actions of a presiding officer.

a. *Section 2.341(b)—Petitions for review.*

Section 2.341 contains requirements pertaining to the review of decisions and actions of a presiding officer by the Commission. Current § 2.341(b)(1) allows parties to file a petition for review of a full or partial initial decision by a presiding officer or any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part. Under the current regulations a petition for review must be filed with the Commission within 15 days of service of the decision. Similarly, § 2.341(b)(3) allows other parties to file an answer supporting or opposing Commission review within ten days after service of a petition for review. And the petitioning party is allowed to file a reply brief within five days of service of any answer. Experience has demonstrated that the time the NRC's rules allow for petitions for review of an order of a presiding officer (15 days) is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore proposing to extend the time to file a petition for review and an answer to the petition from ten to 25 days. The NRC also is proposing to extend the time to file a reply to an answer from five to ten days.

The NRC does not expect the proposed change in appeal deadlines to result in any unnecessary delays in licensing. For one thing, higher-quality briefs should expedite appellate decisionmaking. Moreover, most of the appellate litigation at the NRC is preliminary to any final licensing decisions; it takes place before the NRC staff finishes its safety and environmental reviews and generally does not affect the timing of those reviews. Finally, even when a final presiding officer decision approving a license comes before the Commission on a petition for review, the license can be issued immediately, notwithstanding the pendency of a petition for review. *See* 10 CFR 2.340(f), 2.341(e).

b. *Section 2.341(c)—Petitions for review not acted upon deemed denied.*

As stated in the 2004 part 2 revisions, § 2.341 was intended to essentially restate the provisions of former § 2.786 (*See* 69 FR 2225; January 14, 2004). But the provisions of former § 2.786(c), under which petitions for Commission review not acted upon were deemed denied, were inadvertently omitted from § 2.341. Accordingly, the NRC proposes to add a new § 2.341(c)(1); existing § 2.341(c)(1) would be redesignated as § 2.341(c)(2), and existing § 2.341(c)(2) would be redesignated as § 2.341(c)(3). Proposed § 2.341(c)(1) would adopt the deemed denied provisions of the former § 2.786(c) with the exception of the 30-day time limit, which would be extended to allow 120 days for Commission review. As a practical matter, the 30-day timeframe has necessitated extensions of time in most proceedings, as the prescribed briefing period comprehends 30 days. A 120-day Commission review period would allow for sufficient time to review the filings at the outset, without the unintended consequence of the frequent need for extensions. The NRC therefore is proposing to adopt the deemed denied provisions of former § 2.786 with a 120-day time limit as a new § 2.341(c)(1).

c. *Section 2.341(a)—Time to act on a petition for review.*

Section 2.341(a)(2) currently provides the Commission with 40 days to act on a decision of a presiding officer or a petition for review. The current 40-day timeframe has necessitated extensions of time in most proceedings, as the prescribed briefing period comprehends 30 days, often leaving the Commission insufficient time for an effective review of the filings. As discussed above with respect to the "deemed denied" provision, a 120-day Commission review period provides for a reasonable period to review the filings without the unintended consequence of the frequent need for extensions. The NRC therefore is proposing to extend the time for Commission review from 40 days to 120 days. As has always been the case, the Commission may act before that time or extend that period as it deems necessary.

d. *Section 2.341(f)—Standards for Atomic Safety Licensing Board certifications and referrals.*

The NRC proposes to revise paragraph (f) of this section to address a perceived inconsistency in the standards for Atomic Safety Licensing Board certifications and referrals to the Commission and Commission review of these issues. Section 2.323(f) currently allows a presiding officer to refer a ruling to the Commission if prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, *or* if the presiding officer determines that the decision or ruling involves a novel issue that merits Commission review at the earliest opportunity. Current § 2.341(f) states that referred or certified rulings "will be reviewed" by the Commission only if the referral or certification "raises significant and novel legal or policy issues, *and* resolution of the issues would materially advance the orderly disposition of the proceeding" (emphasis added). This language has been interpreted as allowing the Commission to accept referrals or certifications only if *both* standards in § 2.341(f) are met, even though § 2.323(f) allows a presiding officer to refer or certify a question or ruling if *either* of the comparable criteria in § 2.323(f) is met. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant, Units 3 and 4), CLI–09–3, 69 NRC 68, 72 (2009). The proposed revision to § 2.341(f) would provide the Commission with maximum flexibility by allowing, but not requiring, the Commission to review an issue if it raises significant legal or policy issues, or if resolution of the issue would materially advance the orderly disposition of the proceeding, or if both standards are met.

12. Section 2.346—Authority of the Secretary.

Currently, § 2.346(j) authorizes the Secretary to "[t]ake action on minor procedural matters." Since 2004, experience with the subpart C hearing procedures has shown that greater efficiencies could be achieved if the Secretary is given explicit authority to take action on more than minor procedural matters. The NRC is therefore proposing to authorize the Secretary to "take action on procedural or other minor matters." This change would allow the Secretary to take action on a variety of non-substantive

procedural matters, such as motions raising matters that do not explicitly fit within the Secretary's existing authority (*e.g.,* a motion to suspend a hearing notice or the unopposed withdrawal of construction and operating license applications). Time is frequently of the essence on some minor matters; requiring Commission orders and affirmation sessions can sometimes result in undesirable delay in issuing needed procedural directives because of the need to schedule affirmation sessions. Accordingly, the NRC is proposing to amend § 2.346(j) to give the Secretary the authority to "take action on procedural or other minor matters." The NRC is also proposing removing the reference to § 2.311 in paragraph (e). Requests for review under § 2.311 are termed "appeals" rather than "petitions for review." Moreover, there are no deadlines for Commission action on appeals under § 2.311.

13. Section 2.347—Ex parte communications.

Section 2.347 prohibits what are known as ex parte communications between persons outside the NRC and NRC adjudicatory personnel on matters relevant to the merits of an ongoing hearing; this section currently applies to § 2.204 demands for information. Unlike the NRC actions subject to §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e) and 2.312 (which would continue to be referenced in § 2.347(e)(1)(i) and (ii)), hearing rights do not attach to a demand for information because it is not an order; it is a pre-enforcement document requesting information. 56 FR 40663, 40670, 40682; August 15, 1991. The NRC is therefore proposing to amend the ex parte communication provisions in § 2.347(e)(1)(i) and (ii) by deleting the two references to § 2.204. Formerly, § 2.204 pertained to orders for modification of licenses and orders to show cause, and these orders did involve the right to a hearing. (50 FR 38113; September 20, 1985). Thus, when § 2.780—the precursor to § 2.347—was established in 1988, the references to § 2.204 were proper. But in 1991 the references became erroneous when the provisions for orders for modification of licenses were deleted and replaced by the § 2.204 provisions regarding demands for information. Accordingly, the NRC is proposing conforming changes to § 2.347(e)(1)(i) and (ii).

14. Section 2.348—Separation of functions.

The separation of functions provisions in § 2.348 prohibit certain communications between specified sets of NRC personnel on matters relevant to the merits of an ongoing adjudicatory hearing. Similar to the § 2.347 proposal discussed above, the NRC is proposing to correct the separation of functions provisions in § 2.348(d)(1)(i) and (ii) by deleting the two references to § 2.204. As explained above, unlike the other specified NRC actions, hearing rights do not attach to a demand for information. When § 2.781—the precursor to § 2.348—was established in 1988, the references to § 2.204 were proper. But the references became erroneous in 1991 for the reasons stated above with respect to § 2.347(e)(1)(i) and (ii). Accordingly, the NRC is now proposing the conforming changes to § 2.348(d)(1)(i) and (ii).

C. Subpart G—Sections 2.700 through 2.713

1. Section 2.704—Discovery—required disclosures.

Sections 2.704(a) through (c) set forth the required disclosures that parties other than the NRC staff must make in formal NRC adjudications. To conform with the timing provisions of § 2.336(d), a change in § 2.704(a)(3) is being proposed. Presently, § 2.704(a)(3) requires that the initial disclosures be made within 45 days after a prehearing conference order following the initial prehearing conference specified in § 2.329. And § 2.704(e) requires a party that has made a disclosure under § 2.704 to supplement its disclosure if the party learns that in some material respect the information disclosed was incomplete or incorrect (provided the additional or new information was not made available to other parties during the discovery process or in writing). In addition, with respect to the testimony of an expert from whom a report is required under § 2.704(b), the duty to supplement under § 2.704(e) extends to both the information contained in the report and provided through a deposition of the expert. The proposed § 2.704(a)(3) would require that unless otherwise stipulated or directed by order of the presiding officer, a party's initial disclosures must be made within 30 days of the order granting a hearing and that parties must provide disclosure updates every 30 days. Each update would include documents subject to disclosure under this section that have not been disclosed in a prior update, and that are developed, obtained, or discovered during the period that runs from the last disclosure update to 5 business days before the filing of the update.

2. Section 2.705—Discovery—additional methods.

Section 2.705(b)(2) allows the presiding officer to "alter the limits in these rules on the number of depositions and interrogatories." But the rules do not limit the number of depositions or interrogatories. The NRC is therefore proposing to amend this section to allow the presiding officer to set reasonable limits on the number of interrogatories and depositions. This proposed change would remove the confusion in this section and improve the efficiency of NRC adjudicatory proceedings.

3. Sections 2.709—Discovery against NRC staff and 2.336—General Discovery.

a. *Sections 2.709(a)(6)—Required initial disclosures in enforcement proceedings and 2.336—General Discovery.*

The NRC is proposing to amend the NRC staff's mandatory disclosure obligations for enforcement proceedings conducted under subpart G of 10 CFR part 2. The current regulation that applies to these proceedings, § 2.336, requires the disclosure of documents that are outside of the scope of the enforcement proceeding, which results in the inclusion of many unrelated documents in the mandatory disclosures. Therefore, the NRC is proposing to amend § 2.336(b) to remove subpart G enforcement proceedings from the general discovery requirements; a corresponding amendment would be made to § 2.709 to specify the staff's disclosure obligations in a subpart G enforcement proceeding. This amended section would limit the scope of the staff's disclosures to documents relevant to disputed issues alleged with particularity in the pleadings. Not only would these amended disclosure requirements benefit the NRC staff (by reducing the resources necessary to review, prepare, and provide the required documents), but they would also aid the other parties to the proceeding (by reducing the number of documents they need to review to only documents that are relevant to the issues in the proceeding).

Further, this disclosure requirement would parallel the initial document disclosure requirement in § 2.704(a)(2) for parties other than the NRC staff. Although parties other than the NRC staff are also required by § 2.704(a)(1) to identify individuals likely to have discoverable information relevant to disputed issues, the NRC considers a similar disclosure requirement for the NRC staff to be unnecessary. The discoverable portions of any pertinent Office of Investigations report or related inspection report should identify many of the individuals likely to have discoverable information relevant to disputed issues.

Proposed § 2.709(a)(6)(i) would also require that if a claim of privilege or protected status is made by the NRC staff for any documents, a list of these documents must be provided with sufficient information for assessing the claim of privilege or protected status. Finally, proposed § 2.709(a)(6)(ii) would require the NRC staff to provide disclosure updates every 30 days. Each update would include documents subject to disclosure under this section that have not been disclosed in a prior update and that are developed, obtained, or discovered during the period that runs from 5 business days before the last disclosure update to 5 business days before the filing of the update, as would be required of other parties by proposed § 2.704(a)(3).

b. *Section 2.709(a)(7)—Form and type of NRC staff disclosures.*

Proposed § 2.709(a)(7) would specify the manner in which the NRC staff may disclose information in subpart G proceedings. For publicly available documents, data compilations, or other tangible things, the NRC staff's duty to disclose such information to the other parties and the presiding officer would be met by identifying the location, the title, and a page reference to the subject information. If the publicly available documents, data compilations, or other tangible things can be accessed at either the NRC Web site, *http://www.nrc.gov,* or at the NRC Public Document Room, the staff would provide the parties and the presiding officer with any citations necessary to access this information. This addition parallels § 2.704(a)(2) for disclosures by parties other than the NRC Staff.

D. Subpart L—Sections 2.1200 Through 2.1213

1. Subpart L—Title.

Subpart L of 10 CFR part 2 contains the adjudicatory procedures that the NRC uses to conduct most of its licensing proceedings. The procedures in subpart L were substantially revised in 2004 (69 FR 2182; January 14, 2004), and are intended to be used with the generally applicable provisions in subpart C of 10 CFR part 2. Under the provisions of 10 CFR part 2 as revised in 2004, a hearing conducted under subpart L meets the APA requirements for an "on the record" or "formal" hearing. *Citizens Awareness Network, Inc.* v. *NRC,* 391 F.3d 338, 351 (2004). This is true despite the fact that the NRC also provides more formal adjudicatory procedures under subpart G of part 2. However, the title of subpart L was not revised in 2004 to reflect the changed (*i.e.,* less formal) character of its procedures. To eliminate any confusion caused by the current title of subpart L, the NRC proposes to revise the title of subpart L to "Simplified Hearing Procedures for NRC Adjudications." The revised title would reflect that these proceedings are less formal than the formal part 2 subpart G hearings, but are still formal "on the record" hearings under the APA, and not "informal" hearings as might be inferred from the current title.

2. Section 2.1202—Authority and role of NRC staff.

Section 2.1202 pertains to the authority and role of the NRC staff in less formal hearings. The introductory text of § 2.1202(a) could be erroneously interpreted as suggesting that the staff is required to advise the presiding officer on the merits of contested matters. The NRC proposes to revise § 2.1202(a) to require that in subpart L proceedings the staff's notice to parties regarding relevant staff licensing actions must include an explanation of why both the public health and safety is protected and the action is in accord with the common defense and security, despite the "pendency of the contested matter before the presiding officer."

A conforming change to the introductory text of § 2.1403(a) also is being proposed to require the NRC staff to provide this explanation when the same situation arises in subpart N proceedings.

3. Sections 2.1205 and 2.710—Summary disposition; Motions for summary disposition; Authority of the presiding officer to dispose of certain issues on the pleadings.

The summary disposition motion requirements in § 2.1205 do not require the inclusion of a statement of material facts. Before the 2004 amendments to 10 CFR part 2, the NRC's requirements governing motions for summary disposition required these motions to be accompanied by a "separate, short and concise statement of material facts as to which the moving party contends that there is no genuine issue to be heard." When the summary disposition motion requirements were included in the hearing procedures in 10 CFR part 2, subpart L, the requirement for a statement of material facts was inadvertently omitted from § 2.1205. Proposed § 2.1205 would restore the requirement for a statement of material facts for which the moving party contends that there is no genuine issue. This section would not include the requirement for a "separate" statement of material facts in dispute, as the rule already requires that the statement be "attached" to the motion. The NRC is proposing a conforming change to § 2.710 to remove the word, "separate," which would ensure that §§ 2.710 and 2.1205 are identical in this regard.

4. Section 2.1209—Findings of fact and conclusions of law.

Section 2.712(c) specifies the format for proposed findings of fact and conclusions of law in subpart G proceedings, but a similar format provision does not exist in subpart L. The NRC, therefore, is proposing to amend § 2.1209 by adding the format requirements now contained in § 2.712(c). These format requirements would aid presiding officers in subpart L proceedings by ensuring that proposed findings of fact and conclusions of law clearly and precisely communicate the parties' positions on the material issues in the proceeding, with exact citations to the factual record.

5. Section 2.1213—No significant hazards consideration determinations not subject to stay provisions.

The proposed amendment to § 2.1213 would add a new paragraph (f). The proposed paragraph would exclude from the stay provisions matters limited to whether a no significant hazards consideration determination for a power reactor license amendment was proper. No significant hazards consideration determinations may be made in license amendment proceedings for production or utilization facilities that are subject to the 10 CFR part 50 requirements; challenges to these determinations are not allowed in accordance with 10 CFR 50.58(b)(6). Excluding no significant hazards consideration determinations from the stay provisions also is consistent with Federal case law holding that these findings are final agency actions, which are not appealable to the Commission. *Center for Nuclear Responsibility, Inc.* v. *U.S. Nuclear Regulatory Comm'n,* 586 F.Supp. 579, 580–81 (D.DC 1984).

E. Subpart M—Sections 2.1300 Through 2.1331

The following changes are being proposed to subpart M of 10 CFR part 2, which sets forth the procedures that are applicable to hearings on license transfer applications.

1. Sections 2.1300 and 2.1304—Provisions governing hearing procedures for subpart M hearings.

Section 2.1300 states that the provisions of subpart M, together with subpart C, govern all adjudicatory proceedings on license transfers, but current § 2.1304 states that the procedures in subpart M "will constitute the exclusive basis for hearings on license transfer applications." Section 2.1304, part of the original subpart M, was effectively replaced by § 2.1300 in

the 2004 part 2 revisions, and could have been removed as part of that rulemaking. The NRC is now proposing to remove § 2.1304 and amend § 2.1300 to clarify that, in subpart M hearings on license transfers, both the generally applicable intervention provisions in subpart C and the specific subpart M hearing procedures govern.

2. Section 2.1316—Authority and role of NRC staff.

Section 2.1316(c) provides the procedures for the NRC staff to participate as a party in subpart M hearings. These procedures would be updated to mirror the requirements of § 2.1202(b)(2) and (3), which set forth the NRC staff's authority and role in subpart L hearings. Proposed § 2.1316(c)(1) would require the NRC staff—within 15 days of the issuance of an order granting requests for hearing or petitions to intervene and admitting contentions—to notify the presiding officer and the parties whether it desires to participate as a party in the proceeding. If the staff decides to participate as a party, its notice would identify the contentions on which it will participate as a party. If the NRC staff later desires to be a party, the NRC staff would notify the presiding officer and the parties, and identify the contentions on which it wished to participate as a party, and would make the disclosures required by § 2.336(b)(3) through (5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice. Once the NRC staff chooses to participate as a party in a subpart M license transfer proceeding, it would have all the rights and responsibilities of a party with respect to the admitted contention or matter in controversy on which the staff chose to participate. As with § 2.1202, "the NRC staff must take the proceeding in whatever posture the hearing may be at the time that it chooses to participate as a party." (69 FR 2228; January 14, 2004).

F. Subpart N—Sections 2.1400 Through 2.1407

Section 2.1407—Appeal and Commission review of initial decision.

Current § 2.1407(a)(1) allows parties to appeal orders of the presiding officer to the Commission within 15 days after the service of the order. Similarly, § 2.1407(a)(3) allows parties that are opposed to an appeal to file a brief in opposition within 15 days of the filing of the appeal. Experience has demonstrated that the time the NRC's rules allow for appeals from an order of a presiding officer is unnecessarily short, and sometimes results in superficial appellate briefs. Most adjudicatory bodies allow substantially more time for litigants to frame appellate arguments and to perform the necessary research and analysis. Well-considered briefs enable the appellate body, here the Commission, to make faster and better-reasoned decisions. The NRC is therefore proposing to extend the time to file an appeal and a brief in opposition to an appeal from 15 to 25 days. The NRC does not expect the proposed change in appeal deadlines to result in any delays in licensing. For one thing, higher-quality briefs should expedite appellate decision-making. Moreover, most of the appellate litigation at the NRC is preliminary to any final licensing decisions; it takes place before the NRC staff finishes its safety and environmental reviews and generally does not affect the timing of those reviews.

G. Other Changes

1. Section 2.4—Definitions.

The current definition of "Participant" applies to an "individual or organization," and does not explicitly apply to governmental entities that have petitioned to intervene in a proceeding. The NRC proposes to correct this definition by adding a parenthetical reference to "individual or organization" so that it reads: "individual or organization (including governmental entities)."

The current definition of "NRC personnel" in § 2.4 contains outdated references to §§ 2.336 and 2.1018. The proposed revision of "NRC personnel" would update this definition by removing references to §§ 2.336 and 2.1018, neither of which references the term "NRC personnel."

2. Section 2.101—Filing of application.

In 2005, § 2.101 was amended to remove paragraph (e) and redesignate (f) and (g) as paragraphs (e) and (f). (70 FR 61887; October 27, 2005) The internal references to paragraph (g) were not updated to reflect the new paragraph designations. References in this section to § 2.101(g) would be corrected to reference § 2.101(f). There are no references to former § 2.101(f) in this section.

3. Section 2.105—Notice of proposed action.

Proposed § 2.105 would make three changes to the current regulation: (1) The introductory text of paragraph (a) would be revised by inserting a reference to the NRC's Web site; (2) The introductory text of paragraph (b) would be clarified by specifying that the referenced notice pertains to one published in the **Federal Register**; and, (3) The introductory text of paragraph (d) would be corrected to reference the time period stated in § 2.309(b).

4. Section 2.802—Petition for rulemaking.

The proposed § 2.802(d), in accordance with the proposed definition of "Participant" in § 2.4 and the proposed amendment to the procedures for challenging the NRC's regulations in § 2.335, would replace the word "party" with "participant."

5. Corrections of other outdated and incorrect references.

Section 51.102(c) contains an outdated reference to "Subpart G of Part 2." The reference would be corrected to refer generally to part 2. Also, the reference to the former Atomic Safety and Licensing Appeal Board would be removed from § 51.102.

Sections 51.4, 51.34, 51.109(f), and 51.125 contain outdated references to the former Appeal Board, which would be removed from these sections.

6. Section 54.27—Hearings.

Section 54.27 (pertaining to license renewal hearings for nuclear power reactors) contains an outdated reference to a 30-day period to request a hearing. As discussed in the 2004 part 2 revisions, except for license transfer and HLW proceedings, the time in which to request a hearing was extended to 60 days from the date a notice of opportunity for hearing is published (either in the **Federal Register** or on the NRC's Web site). (January 4, 2004; 69 FR 2200). The proposed § 54.27 would be corrected to reflect the proper 60-day period to request a hearing, and a reference to 10 CFR 2.309 would be added. The proposed § 54.27 would retain the provision that in the absence of any hearing requests, a renewed operating license may be issued without a hearing upon 30-day notice and publication in the **Federal Register**.

7. Part 2—Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders.

Throughout 10 CFR part 2, the terms "Presiding Officer" and "presiding officer" are used interchangeably, but with different capitalization, unlike 10 CFR part 51, which uses the term "presiding officer" uniformly without capitalization. This proposed rule would change all references to the term "Presiding Officer" to "presiding officer" to bring 10 CFR part 2 into conformance with 10 CFR part 51.

VI. Additional Issues for Public Comment

A. Scope of Mandatory Disclosures

Section 2.336 contains the general procedures governing disclosure of information before a hearing in

contested NRC adjudicatory proceedings. The NRC is soliciting public comment on whether it should revise the § 2.336 mandatory disclosures to focus the staff's disclosure obligations under § 2.336(b)(3) on documents related to the parties' admitted contentions. Section 2.336(b) contains the NRC staff's mandatory disclosure obligations. Specifically, under § 2.336(b)(3) the NRC staff must disclose all documents supporting the staff's review of the application or proposed action that is the subject of the proceeding without regard to whether the documents are relevant to the admitted contentions.

The 2004 revision to part 2 imposed mandatory disclosure provisions on all parties that were intended to reduce the overall discovery burden in NRC adjudicatory proceedings. The NRC is concerned that this has not been the case and that the overall discovery burden has not been reduced. The NRC believes that the primary source of the burden stems from the disclosure of hundreds or thousands of documents by the NRC staff that are unrelated to any admitted contention; disclosure of voluminous material by the staff also burdens other parties to the proceeding with searching through hundreds or thousands of unrelated documents to find the material that is relevant to the issues in dispute (other parties' disclosures are already limited to documents relevant to the admitted contentions; the staff's disclosures are not).

All parties also are required to produce privilege logs (a list of discoverable documents that are not being disclosed because the party asserts a privilege to protect the documents). Due to the large number of documents that are captured by the current regulations, the NRC staff must prepare a log of privileged documents, most of which are entirely unrelated to the contentions. Limiting the disclosure obligations to the issues in dispute would reduce the number of documents produced by the NRC staff, and also would provide the other parties to the proceeding with a list of relevant documents that were withheld, which would make it easier for the parties to identify any withheld documents that they may seek to obtain. This change would also align the scope of the NRC staff's disclosure obligations with those of the other parties to the proceeding. At the same time, the parties' opportunity to obtain publicly available documents would not be affected, as these proposed changes would not affect the full scope of documents that will be available to parties and other members of the public through ADAMS.

The NRC is also seeking comments on whether it should add a new requirement to the end of § 2.336(d) to clarify that the duty of mandatory disclosure with respect to new information or documents relevant to a contention ends when the presiding officer issues a decision on that contention or when specified by the presiding officer or the Commission.

1. Specific Questions for Public Comment

(a) Would applying NRC staff disclosures under § 2.336(b)(3) to documents related only to the admitted contentions aid parties other than the NRC staff by reducing the scope of documents they receive and review through the mandatory disclosures?

(b) Is the broad disclosure obligation imposed on the NRC staff by current Section 2.336(b) warranted in light of (a) the other parties' more limited disclosure obligations and (b) the parties' ability to find these same documents in an ADAMS search?

(c) Would a shorter, more relevant privilege log aid parties to the proceeding?

(d) Would potential parties prefer to maintain the status quo?

(e) Would limiting the mandatory disclosures of documents as described in Federal Rule of Civil Procedure 26(a)(1)(A)(ii) be the preferred option?

2. Draft Rule Text That Would Limit the Scope of NRC Staff's Mandatory Disclosures

- Except for proceedings conducted under subpart J of this part (or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding), the NRC staff must, within 30 days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose and make available the following documents:
  - The application and applicant or licensee requests associated with the application or proposed action that is the subject of the proceeding;
  - NRC correspondence (including e-mail) with the applicant or licensee associated with the application or proposed action that is the subject of the proceeding;
  - All documents (including documents that provide support for, or opposition to, the application or proposed action) supporting the NRC staff's review of the application or proposed action that are relevant to the contentions that have been admitted into the proceeding;
  - Any NRC staff documents (except those documents for which there is a claim of privilege or protected status) representing the NRC staff's determination on the application or proposal that is the subject of the proceeding. Documents representing the NRC staff's determination include published NRC reports and published draft or final environmental impact statements or environmental assessments; and
  - A list of all otherwise-discoverable documents for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

B. Alternative Approaches on Interlocutory Appeals

The NRC is seeking public comments as to whether to amend 10 CFR part 2 regarding interlocutory review of rulings by a presiding officer granting or denying a request for hearing or intervention petition, including late-filed requests or petitions. Currently, § 2.311(c) effectively allows the requestor or petitioner to appeal an order wholly denying an intervention petition or request for hearing. Therefore, if the presiding officer grants the intervention petition and denies the admissibility of one or more proposed contentions, the petitioner may not appeal the denial of any proposed contentions until the presiding officer issues a final decision at the end of the proceeding. Conversely, any party other than the petitioner may immediately appeal the order on the grounds that the requestor or petitioner lacks standing or that all of their proposed contentions were inadmissible. Although this basic scheme for interlocutory review of intervention petitions and requests for hearing has been in place since 1972 (*see* 37 FR 28710; December 29, 1972), there have been some suggestions that a change to the current practice might be warranted to either provide earlier appellate review of contention admissibility or, alternatively, to discourage frivolous appeals. The NRC is considering two options for a potential amendment. The NRC requests comment on the options and on the possible rule language that would implement each option, including comments on the resource implications of both options for all parties and for the Commission.

Option 1

The first option would amend § 2.311(c) and (d) to allow any party to appeal an order granting a request for hearing or petition to intervene in whole or in part within 25 days of the presiding officer's issuance of the order. This amendment would effectively allow all parties to immediately appeal rulings on the admissibility of any particular contention (including late-filed contentions).

The potential advantage of amending § 2.311 is that it allows early resolution of contention admissibility issues. Specifically, it eliminates the possibility that, after a Board has issued its final order in the proceeding, the Commission on appeal will remand the proceeding to the Board for consideration of a contention that the Commission has determined should have been admitted and thereby prolong the proceeding. Consistent with the general principles applied by courts and agencies that favor limited interlocutory review, the disadvantages of departing from the current practice under § 2.311 include the potential increase in the Commission's appellate workload at the early stage of a proceeding and the attention given to matters that it may prove unnecessary to address at all if a party decides not to pursue the matter at the conclusion of the proceeding or if further developments, such as settlement, obviate the need to address the admissibility question. This amendment would not alter a party's ability to appeal orders on the question of standing.

Option 2

The second option would delete § 2.311(d)(1) in order to remove the right of parties other than the petitioner to appeal orders granting an intervention petition. This would leave all parties with the same appellate rights, including the right to seek interlocutory review under § 2.341(f)(2). The potential advantage of this option is that it would reduce the Commission's appellate workload by removing any incentive for parties other than the petitioner to oppose all proffered contentions solely to preserve their right to appeal. The main disadvantage would be removing the means by which an early determination can be made as to the proper admission of some contentions.

VII. Section-by-Section Analysis

A. Introductory Provisions—Sections 2.1 Through 2.8

Section 2.4—Definitions.

This section would modify the definition of *Participant* in § 2.4, which currently applies to individuals or organizations that petition to intervene or request a hearing, but are not yet parties. The new definition would clarify that any individual or organization—including States, local governments, and Federally-recognized Indian Tribes—that petitions to intervene or requests a hearing shall be considered a participant. Further, Federally-recognized Indian Tribes do not have to be "affected" Federally-recognized Indian Tribes to participate in NRC licensing actions. "Affected" is reserved for Federally-recognized Indian Tribes that seek to participate in the high-level waste proceeding; it does not apply to the NRC's other licensing actions. The current definition also indicates that States, local governmental bodies, or affected Federally-recognized Indian Tribes that seek to participate under § 2.315(c) shall be considered participants. This section does not grant these governmental bodies § 2.315(c) participant status; this status is only obtained when the interested governmental body is afforded the opportunity to participate in the proceeding by the presiding officer. Governmental bodies that have requested § 2.315(c) participant status, but have not yet been granted or denied such status by the presiding officer, are only entitled to participate in a proceeding as a § 2.4 participant. This section also would modify the definition of "NRC personnel," which contains outdated references to §§ 2.336 and 2.1018; the proposed revision would remove these references."

B. Subpart A—Sections 2.100 Through 2.111

1. Section 2.101—Filing of application.

This section would be amended to correct references to § 2.101(g), which should reference § 2.101(f). These changes would not alter the meaning or intent of this regulation.

2. Section 2.105—Notice of proposed action.

This section would be updated to include a reference to the NRC's Web site. Paragraph (b) of this section would be updated to clarify that the referenced "notice" is one that is published in the **Federal Register**, and paragraph (d) would be amended to include a reference to the time period included in § 2.309(b).

C. Subpart C—Sections 2.300 Through 2.390

1. Section 2.305—Service of documents; methods; proof.

Section 2.305, which currently requires any paper served in an NRC proceeding to include a signed certificate of service, would be amended to clarify that a signed certificate of service must be filed with any document filed with the NRC. Under § 2.304(d)(1) persons submitting electronic documents to the NRC through the E-Filing system do not need to physically sign their documents; signature with a participant's digital ID certificate satisfies the requirement that a document be signed.

Section 2.305(g)(1), which does not currently provide an address for service upon the NRC staff when a filing is not being made through the E-Filing system and no attorney representing the NRC staff has filed a notice of appearance, would be updated to provide participants with an address to use in these circumstances.

2. Section 2.309—Hearing requests, petitions to intervene, requirements for standing, and contentions.

a. *Section 2.309(b)—Timing.*

Section 2.309(b), which does not provide a time for answers to § 2.205(c) orders, would be amended to clarify that recipients of § 2.205(c) orders have the time specified in the order to file their answers.

b. *Section 2.309(c) and (f)—Subsequent Submission of Petition/Request or New or Amended Contentions.*

Section 2.309(c) would be updated to consolidate the nontimely filing requirements and to clarify the intent of the regulations. Amended § 2.309(c) would incorporate the § 2.309(f)(2)(i) through (iii) factors into amended § 2.309(c)(2)(i) through (iii) as the factors to be considered in evaluating a filing after the deadlines in § 2.309(b). Thus, unlike the current requirement where both the § 2.309(c) and § 2.309(f)(2) factors must be individually addressed, the proposed amendment incorporates the § 2.309(f)(2) factors into amended § 2.309(c)(2)(i) through (iii). Meeting these three factors would provide sufficient justification for the filing after the deadlines in § 2.309(b). Section 2.309(c)(2)(i) would require the requestor or petitioner to demonstrate that the information upon which the new or amended contention is based was not previously available. The phrase "not previously available" in this paragraph means that a requestor or petitioner cannot base a contention on a document or a report that does not yet exist. For example, if at the time of requestor or petitioner's filing, an agency or organization was working on a report scheduled for publication in six months, the requestor or petitioner could not anticipate this publication and rely on the report in the submission

of contentions. Also, § 2.309(c)(2)(ii) would require the information that supports the filing after the deadlines in § 2.309(b) to be materially different from information previously available. And § 2.309(c)(2)(iii) would require a requestor or petitioner to submit this filing in a timely fashion based on the availability of the subsequent information. But this interpretation does not mean that a petitioner or requestor could not submit a filing after the publication of a report, provided that the report contains information that meets both the filing criteria in § 2.309(c) and the admissibility criteria in § 2.309(f).

Section 2.309(c)(3) would clarify that any new or amended intervention petition must include new or amended contentions if the petitioner seeks admission as a party, and requires a petitioner to meet the standing and admissibility requirements in §§ 2.309(d) and (f); a petitioner that has already satisfied the § 2.309(d) standing requirements would not have to do so again.

Section 2.309(c)(4) would require any new or amended contentions filed by a party to meet the admissibility requirements in § 2.309(f), and would clarify that a party or a participant who has already demonstrated standing does not need to satisfy the standing requirements in § 2.309(d) again.

Section 2.309(c)(5) would clarify that new or amended contentions arising under the National Environmental Policy Act also must meet the filing requirements of § 2.309(c)(1) through (c)(2).

c. *Section 2.309(h)—Requirements applicable to States, local governmental bodies, and Federally-recognized Indian Tribes seeking party status.*

Paragraphs (d)(2)(i) and (ii) apply only to "affected" Federally-recognized Indian Tribes, which is only proper in the context of a high-level radioactive waste disposal proceeding. Proposed § 2.309(h), which is the current § 2.309(d)(2), would be revised to clarify that, in the case of § 2.309(h)(1) and (2), any Federally-recognized Indian Tribe that wishes to participate in any potential proceeding for a facility located within its boundaries does not need to further establish its standing. Section 2.309(h)(3), which is the current § 2.309(d)(2)(iii), would only apply to a high-level waste disposal proceeding and would retain the references to affected Federally-recognized Indian Tribes; the references in this section would mirror the language used in the § 2.1001 definition of *Party.*

3. Section 2.311—Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

Proposed § 2.311(b) would extend the time to file an appeal and a brief in opposition to an appeal from ten to 25 days.

4. Section 2.314—Appearance and practice before the Commission in adjudicatory proceedings.

Proposed § 2.314(c)(3) would extend the time to file an appeal to an order disciplining a party from ten to 25 days.

5. Section 2.315—Participation by a person not a party.

Proposed § 2.315(c) would clarify that interested States, local government bodies, and Federally-recognized Tribes, who are not parties admitted to a hearing under § 2.309 and seek to participate in the hearing, must take the proceeding as they find it. Consistent with NRC case-law, § 2.315(c) participants would not be able to raise issues related to contentions or issues that were resolved prior to their entry as § 2.315(c) participants in the proceeding—if a State, local governmental body, or Federally-recognized Indian Tribe chooses to participate in a proceeding late in the process, their participation is subject to any orders already issued and should not interfere with the schedule established for the proceeding.

6. Section 2.319—Power of the presiding officer.

Proposed § 2.319(r) would reincorporate former § 2.1014(h) without any changes to the original language or intent. This section would require that an admitted contention that constitutes pure issues of law, as determined by the presiding officer, must be decided on the basis of briefs or oral argument.

7. Section 2.323—Motions.

Proposed § 2.323(f) would allow the presiding officer to independently, or in response to a petition from a party, certify questions or refer rulings to the Commission if the issue satisfies one of the two § 2.323(f)(1) criteria. In each case, the presiding officer would make the initial determination as to whether the issue or petition raises significant and novel legal or policy issues, or if prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding.

8. Section 2.335—Consideration of Commission rules and regulations in adjudicatory proceedings.

Section 2.335 limits the requests for waivers or exceptions from NRC regulations to parties to a proceeding. Proposed § 2.335 would clarify that participants to an adjudicatory proceeding, including petitioners, may seek a waiver or exception to the NRC's regulations for a particular proceeding. This change would adopt the NRC's practice of allowing petitions to intervene and requests for hearing to contain § 2.335 requests for waivers or exceptions from the NRC's regulations.

9. Section 2.336—General Discovery.

This section, which currently requires an update within 14 days of obtaining or discovering disclosable material, would be amended to require the filing of a mandatory disclosure update every 30 days. These updates would include all disclosable documents and information developed during the period that runs from five business days before the last disclosure update to 5 business days before the filing of the update. Parties not disclosing any documents or information are expected to file an update informing the presiding officer and the other parties that no documents or information are being disclosed. The duty of mandatory disclosure with respect to new information or documents relevant to a contention would end when the presiding officer issues a decision on that contention, or as specified by the presiding officer or the Commission.

10. Section 2.340—Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

Proposed § 2.340 would clarify that in some circumstances the NRC may act on a license, a renewed license, or on a license amendment prior to the completion of any contested hearing.

Paragraphs (a) and (b) concern construction and operating licenses, renewed licenses, combined licenses, and amendments to these licenses. These paragraphs would be amended to clarify that, in the case of a license amendment involving a power reactor, the NRC may complete action on the amendment request without waiting for the presiding officer's initial decision once the NRC makes a determination that the amendment involves no significant hazards consideration. In initial power reactor licensing cases and in cases where the NRC has not made a determination of no significant hazards consideration, these paragraphs would be amended to clarify that the NRC may not act on the application until the presiding officer issues an initial decision in the contested proceeding.

Paragraph (c), which deals with initial decisions under 10 CFR 52.103(g), would be amended to clarify that the presiding officer may make findings of

fact and conclusions of law on the matters put into controversy by the parties, and any matter designated by the Commission to be decided by the presiding officer. Further, the amended paragraph would clarify that matters not put into controversy by the parties shall be referred to the Commission for its consideration. The Commission could, in its discretion, treat any of these referred matters as a request for action under § 2.206 and would process the matter in accordance with § 52.103(f).

Paragraphs (d) and (e), which concern manufacturing licenses under 10 CFR part 52 and proceedings not involving production or utilization facilities, would be amended to clarify that the NRC will issue, deny, or condition any permit, license, or amendment in accordance with a presiding officer's initial decision. These paragraphs also would be amended to clarify that the NRC may issue a license amendment before a presiding officer's initial decision becomes effective.

This proposed revision would clarify that in all cases the presiding officer is limited to matters placed into controversy by the parties, and serious matters not put into controversy by the parties that concern safety, common defense and security, or the environment and that are referred to, and consideration of which is approved by, the Commission.

11. Section 2.341—Review of decisions and actions of a presiding officer.

a. *Extension of time to file a petition for review, answer, and reply.*

Proposed § 2.341(b) would extend the time to file a petition for review and an answer to a petition from 15 to 25 days, and the time to file a reply to an answer from five to ten days.

b. *Petitions for Commission review not acted upon deemed denied.*

Section 2.341 would reincorporate the "deemed denied" provision of former § 2.786(c), with an additional 90 days for Commission review before petitions for review are deemed denied. The additional 90 days would allow the Commission 120 days of review time before a petition for review is deemed denied.

Similarly, the time for the Commission to act on a decision of a presiding officer or a petition for review would be expanded to 120 days to bring this section into alignment with the new timeline in proposed § 2.341(c)(1).

c. *Interlocutory review.*

Section 2.341(f) would allow, but not require, the Commission to review certifications or referrals that meet any of the standards in this paragraph.

12. Section 2.346—Authority of the Secretary.

This proposed section would make explicit the Secretary's authority under § 2.346(j), which is currently limited to minor procedural matters, to include non-minor procedural matters—such as the unopposed withdrawal of construction and operating license applications—which would avoid the need for formal Commission orders and affirmation sessions to issue procedural directives. Also, the reference in paragraph (e) to § 2.311 has been removed because appeals under § 2.311 do not have, associated with them, deadlines for Commission action.

13. Sections 2.347 and 2.348—Ex parte communications; Separation of functions.

These sections currently reference § 2.204 demands for information, which are not orders and do not entail hearing rights. Because demands for information are not adjudicatory matters, the restrictions on *ex parte* communications and the separation of functions limitations do not apply. The references to § 2.204 would be removed from both sections.

D. Subpart G—Sections 2.700 Through 2.713

1. Section 2.704—Discovery—required disclosures.

This section, which currently requires initial disclosures to be made within 45 days after the issuance of a prehearing conference order following the initial prehearing conference, would be amended to require the filing of a mandatory disclosure update every 30 days. These updates would include all disclosable documents and information obtained up to 5 business days before the disclosure update. Any documents or information obtained or developed during the period that runs from the last disclosure update to 5 business days before the filing of the update would be included in the next update. Parties not disclosing any documents or information are expected to file an update informing the presiding officer and the other parties that no documents or information are being disclosed.

2. Section 2.705—Discovery—additional methods.

This section, which currently allows the presiding officer to "alter the limits * * * on the number of depositions and interrogatories," would be amended to remove the impression that these rules impose a limit on the number of depositions and interrogatories—they do not. Instead, the new rule would clarify that the presiding officer "may set limits on the number of depositions and interrogatories."

3. Section 2.709—Discovery against NRC staff.

a. *Section 2.709(a)(6)—Initial disclosures.*

This new paragraph would require the NRC staff to provide initial disclosures within 30 days of the order granting a hearing and without awaiting a discovery request. The NRC staff disclosures would include all NRC staff documents relevant to disputed issues alleged with particularity in the proceedings, including any Office of Investigations Report and supporting Exhibits, and any Office of Enforcement documents regarding the order. The staff would also be required to file a mandatory disclosure update every 30 days. These updates would include all disclosable documents and information obtained or developed during the period that runs from the last disclosure update to 5 business days before the filing of the update. Any documents or information obtained or developed during the period between the 5 business day cutoff and the update would be included in the next update. If the staff does not disclose any documents or information, it would be expected to file an update informing the presiding officer and the other parties that no documents or information are being disclosed. The staff also would be required to provide, with initial disclosures and disclosure updates, a privilege log listing the withheld documents that includes sufficient information to assess the claim of privilege or protected status. These requirements parallel the § 2.704 requirements for parties other than the NRC staff.

b. *Section 2.709(a)(7)—Form and type of NRC staff disclosures.*

Section 2.709(a)(7) is a new paragraph that would allow the staff to satisfy its disclosure obligations for publicly available documents by providing the title, date, and NRC ADAMS accession number for the document. This change would mirror the procedures now used by parties other than the NRC staff to disclose publicly available documents.

4. Section 2.710—Motions for summary disposition.

This section would be amended to conform to the proposed amendments to § 2.1205, which would require parties to attach a statement of material facts to a motion for summary disposition. This proposed change would have no effect on the current practice of including a statement of material facts with a motion; it would clarify that the statement needs to be attached to the motion and does not have to be "separate."

E. Subpart H—Sections 2.800 Through 2.819

1. Section 2.802—Petition for rulemaking.

This section currently allows petitioners for a rulemaking to request the suspension of an adjudicatory proceeding to which they are a party. This section would be amended to allow any petitioner for a rulemaking that is a participant in a proceeding (as defined by § 2.4) to request suspension of that proceeding.

Subpart L—Sections 2.1200 Through 2.1213

2. Section 2.1202—Authority and role of NRC staff.

This section currently requires the NRC staff to include its position on the matters in controversy when it notifies the presiding officer of its decision on a licensing action, which could be incorrectly interpreted as requiring the staff to advise the presiding officer on the merits of the contested matters. This amended section would clarify the authority and role of the NRC staff in less formal hearings; staff notices regarding licensing actions would have to include an explanation of why both the public health and safety is protected and the action is in accord with the common defense and security, despite the "pendency of the contested matter before the presiding officer."

3. Section 2.1209—Findings of fact and conclusions of law.

This section currently does not specify the formatting requirements for findings of fact and conclusions of law. Amended § 2.1209 would incorporate the § 2.712(c) formatting requirements for findings of fact and conclusions of law to ensure that proposed findings of fact and conclusions of law clearly and precisely communicate the parties' positions on the material issues in the proceeding, with exact citations to the factual record.

4. Section 2.1213—Application for a stay.

Section 2.1213 does not currently exclude matters limited to whether a "no significant hazards consideration" determination for a power reactor license amendment was proper from the stay provisions. Section 50.58(b)(6) prohibits challenges to these determinations; section 2.1213 would therefore be amended to exclude from the stay provisions matters limited to whether a no significant hazards consideration determination was proper.

F. Subpart M—Sections 2.1300 Through 2.1331

1. Section 2.1300—Scope of subpart M.

The NRC is proposing to remove § 2.1304 and to amend § 2.1300 to clarify that the generally applicable intervention provisions in subpart C and the specific provisions in subpart M govern in subpart M proceedings.

2. Section 2.1304—Hearing procedures.

The NRC is proposing to remove § 2.1304 and to amend § 2.1300 to clarify that the generally applicable intervention provisions in subpart C and the specific provisions in subpart M govern in subpart M proceedings.

3. Section 2.1316—Authority and role of NRC staff.

This section currently allows the NRC staff to submit a simple notification at any point in the proceeding to become a party. The NRC is proposing to adopt the requirements in § 2.1202(b)(2) and (3), which require the NRC staff, within 15 days of the issuance of an order granting requests for hearing or petitions to intervene and admitting contentions, to notify the presiding officer and the parties whether it desires to participate as a party in the proceeding. The staff's notice would identify the contentions on which it will participate as a party; the staff would be allowed to join the proceeding at a later stage by providing notice to the presiding officer, identifying the contentions on which it wishes to participate as a party, and making the disclosures required by § 2.336(b)(3) through (5).

G. Subpart N—Sections 2.1400 Through 2.1407

1. Section 2.1403—Authority and role of the NRC staff.

This section, which is essentially identical to § 2.1202, would be amended to mirror the changes to that section.

This section would also be updated to correct the reference to § 2.101(f)(8), which should reference § 2.101(e)(8); this change would not alter the meaning or intent of this regulation.

2. 2.1407—Appeal and Commission review of initial decision.

Proposed § 2.1407(a) would extend the time to file an appeal and an answer to an appeal from 15 to 25 days.

H. Parts 51 and 54

1. Section 51.4—Definitions.

This section would be amended to remove an outdated reference to the former Atomic Safety and Licensing Appeal Board in the definition of *NRC Staff.* This change would not alter the meaning or intent of this regulation.

2. Section 51.34—Preparation of finding of no significant impact.

This section would be amended to remove outdated references to "Subpart G of Part 2" and to the former Atomic Safety and Licensing Appeal Board. These changes would not alter the meaning or intent of this regulation.

3. Section 51.102—Requirement to provide a record of decision; preparation.

This section would be amended to remove outdated references to "Subpart G of Part 2" and to the former Atomic Safety and Licensing Appeal Board. These changes would not alter the meaning or intent of this regulation.

4. Section 51.109—Public hearings in proceedings for issuance of materials licensed with respect to a geologic repository.

This section would be amended to remove an outdated reference to the former Atomic Safety and Licensing Appeal Board. This change would not alter the meaning or intent of this regulation.

5. Section 51.125—Responsible official.

This section would be amended to remove outdated references to "Subpart G of Part 2" and to the former Atomic Safety and Licensing Appeal Board. These changes would not alter the meaning or intent of this regulation.

6. Section 54.27—Hearings.

This section would be amended to replace an outdated reference to a 30-day period to request a hearing with a reference to the correct 60-day period to request a hearing. This section would retain the provision that in the absence of any hearing requests, a renewed operating license may be issued without a hearing upon 30-day notice published in the **Federal Register**.

VIII. Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the government's documents be written in clear and accessible language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made to 10 CFR part 2 to improve the organization and readability of the sections being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** Section of this document.

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is approving changes to its procedures for the conduct of hearings in 10 CFR part 2. This action does not constitute the establishment of a government-unique standard as defined in Office of Management and Budget (OMB) Circular A–119 (1998).

X. Environmental Impact: Categorical Exclusion

The proposed rule involves an amendment to 10 CFR part 2, and thus qualifies as an action for which no environmental review is required under the categorical exclusion set forth in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rulemaking.

XI. Paperwork Reduction Act Statement

This rule does not contain any information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The proposed rule emanates from the desire to make corrections, clarifications, and conforming changes to the NRC's rules of practice and to improve the hearing process. Those amendments that merely reflect either clarifications or corrections to the adjudicatory regulations are not changes to the existing processes. These amendments would not result in a cost to the NRC or to participants in NRC adjudicatory proceedings, and a benefit would accrue to the extent that potential confusion over the meaning of the NRC's regulations is removed.

The more substantial changes suggested in the proposed rule would likewise not impose costs upon either the NRC or participants in NRC adjudications, but would instead bring benefits. Allowing 30 days for the updating of disclosures made under § 2.336(d) would, in fact, reduce burdens on the parties. Fairness and equitable treatment would be furthered by the changes made to the 10 CFR 2.309 filing provisions and to the 10 CFR part 2 discovery provisions. These discovery amendments would improve adjudicatory efficiency, as would the amendments made to the format requirements for findings in final § 2.1209.

The NRC does not believe the option of preserving the status quo is a preferred option. Failing to correct errors and clarify ambiguities will result in continuing confusion over the meaning of the rules, which could lead to the unnecessary waste of resources. Also, experience has shown that the agency hearing process can be improved through appropriate rule changes. The NRC believes that the proposed rule would improve the fairness, efficiency, and openness of NRC hearings without imposing costs on either the NRC or on participants in NRC adjudicatory proceedings. This constitutes the regulatory analysis for the proposed rule.

XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 605(b), the NRC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would apply in the context of NRC adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in Section 3 of the Small Business Act, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards established by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

XIV. Backfit Analysis

The NRC has determined that the backfit rule does not apply to the proposed rule amendments because they do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this proposed rule.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552, the NRC is proposing to adopt the following amendments to 10 CFR parts 2, 51, and 54.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f); sec. 102, Pub. L 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42

U.S.C. 2239). Section 2.301 also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.712, also issued under 5 U.S.C. 557. Section 2.340 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.390 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42. U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1472 (42 U.S.C. 2135).

2. The heading for part 2 is revised to read as set forth above.

3. In part 2, wherever it may appear, revise the phrase "Presiding Officer" to read "presiding officer".

4. In § 2.4, paragraph (2) of the definition of "NRC personnel" and the definition of "Participant" are revised to read as follows:

§ 2.4 Definitions.

* * * * *

NRC personnel means:

* * * * *

(2) For the purpose of §§ 2.702 and 2.709 only, persons acting in the capacity of consultants to the Commission, regardless of the form of the contractual arrangements under which such persons act as consultants to the Commission; and

* * * * *

Participant means an individual or organization (including a governmental entity) that has petitioned to intervene in a proceeding or requested a hearing but that has not yet been granted party status by an Atomic Safety and Licensing Board or other presiding officer. Participant also means a party to a proceeding and any interested State, local governmental body, or Federally-recognized Indian Tribe that seeks to participate in a proceeding under § 2.315(c). For the purpose of service of documents, the NRC staff is considered a participant even if not participating as a party.

* * * * *

5. In § 2.101, paragraphs (b), (d), (f)(2)(i)(D), (f)(2)(ii), and (f)(5) are revised to read as follows:

§ 2.101 Filing of application.

* * * * *

(b) After the application has been docketed each applicant for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, except applicants under part 61 of this chapter, which must comply with paragraph (f) of this section, shall serve a copy of the application and environmental report, as appropriate, on the chief executive of the municipality in which the activity is to be conducted or, if the activity is not to be conducted within a municipality on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the docket number of the application; a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and e-mail address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to such documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director, Office of Nuclear Material Safety and Safeguards or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served.

* * * * *

(d) The Director, Office of Nuclear Reactor Regulation, Director, Office of New Reactors, Director, Office of Federal and State Materials and Environmental Management Programs, or Director, Office of Nuclear Material Safety and Safeguards, as appropriate, will give notice of the docketing of the public health and safety, common defense and security, and environmental parts of an application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, except that for applications pursuant to part 61 of this chapter, paragraph (f) of this section applies to the Governor or other appropriate official of the State in which the facility is to be located or the activity is to be conducted and will publish in the **Federal Register** a notice of docketing of the application which states the purpose of the application and specifies the location at which the proposed activity would be conducted.

* * * * *

(f) * * *

(2)(i) * * *

(D) Serve a notice of availability of the application and environmental report on the chief executives or governing bodies of the municipalities or counties which have been identified in the application and environmental report as the location of all or part of the alternative sites if copies are not distributed under paragraph (f)(2)(i)(C) of this section to the executives or bodies.

(ii) All distributed copies shall be completely assembled documents identified by docket number. However, subsequently distributed amendments may include revised pages to previous submittals and, in these cases, the recipients will be responsible for inserting the revised pages. In complying with the requirements of paragraph (f) of this section the applicant may not make public distribution of those parts of the application subject to § 2.390(d).

* * * * *

(5) The Director, Office of Nuclear Material Safety and Safeguards or Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, will cause to be published in the **Federal Register** a notice of docketing which identifies the State and location of the proposed waste disposal facility and will give notice of docketing to the governor of that State and other officials listed in paragraph (f)(3) of this section and will, in a reasonable period thereafter, publish in the **Federal Register** a notice under § 2.105 offering an opportunity to request a hearing to the applicant and other potentially affected persons.

6. In § 2.105, the introductory text of paragraphs (a), (b), and (d) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) If a hearing is not required by the Act or this chapter, and if the Commission has not found that a hearing is in the public interest, it will, before acting thereon, publish in the **Federal Register**, as applicable, or on the NRC Web site, *http://www.nrc.gov,* or both, at the Commission's discretion, either a notice of intended operation under § 52.103(a) of this chapter and a proposed finding that inspections, tests, analysis, and acceptance criteria for a combined license under subpart C of part 52 have been or will be met, or a notice of proposed action with respect to an application for:

* * * * *

(b) A notice of proposed action published in the **Federal Register** will set forth:

* * * * *

(d) The notice of proposed action will provide that, within the time period provided under § 2.309(b):

* * * * *

7. In § 2.305, the heading is revised, and paragraphs (c)(4) and (g)(1) are revised to read as follows:

§ 2.305 Service of documents, methods, proof.

* * * * *

(c) * * *

(4) To provide proof of service, any document served upon participants to the proceeding as may be required by law, rule, or order of the presiding officer must be accompanied by a signed certificate of service stating the names and addresses of the persons served as well as the method and date of service.

* * * * *

(g) * * *

(1) Service shall be made upon the NRC staff of all documents required to be filed with participants and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a party. Service upon the NRC staff shall be by the same or equivalent method as service upon the Office of the Secretary and the presiding officer, *e.g.,* electronically, personal delivery or courier, express mail, or expedited delivery service. If no attorney representing the NRC Staff has filed a notice of appearance in the proceeding and service is not being made through the E-Filing System, service will be made using the following addresses, as applicable: By delivery to the Associate General Counsel for Hearings, Enforcement & Administration, One White Flint North, 11555–0001 Rockville Pike, Rockville, MD 20852; by mail addressed to the Associate General Counsel for Hearings, Enforcement & Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by e-mail to *OgcMailCenter.Resource@nrc.gov;* or by facsimile to 301–415–3725.

* * * * *

8. In § 2.309, paragraph (b)(5), (c), (d)(2), and (d)(3) are revised, paragraphs (h) and (i) are redesignated as paragraphs (i) and (j), respectively, and revised, and a new paragraph (h) is added to read as follows:

§ 2.309 Hearing requests, petitions to intervene, requirements for standing, and contentions.

* * * * *

(b) * * *

(5) For orders issued under §§ 2.202 or 2.205 the time period provided therein.

(c) *Subsequent submission of petition/request or new or amended contentions.* (1) Determination by presiding officer. Hearing requests, intervention petitions, and new or amended contentions filed after the deadlines in paragraph (b) of this section, will not be entertained absent a determination by the presiding officer that there is good cause for its submission after the deadlines in paragraph (b) of this section.

(2) *Good cause.* To show good cause for a request for hearing, petition to intervene, or a new or amended contention filed after the deadlines in paragraph (b) of this section, the requestor or petitioner must demonstrate that:

(i) The information upon which the filing is based was not previously available;

(ii) The information upon which the filing is based is materially different from information previously available; and

(iii) The filing has been submitted in a timely fashion based on the availability of the subsequent information.

(3) *New petitioner.* A hearing request or intervention petition filed after the deadlines in paragraph (b) of this section must include a specification of contentions if the petitioner seeks admission as a party, and must also demonstrate that the petitioner meets the applicable standing and contention admissibility requirements in paragraphs (d) and (f) of this section.

(4) *Party or participant.* A new or amended contention filed by a party or participant to the proceeding must also meet the applicable contention admissibility requirements in paragraph (f) of this section. If the party or participant has already addressed the requirements for standing under paragraph (d) of this section in the same proceeding in which the new or amended contentions are filed, it does not need to do so again.

(5) *Environmental contentions.* For a new or amended contention arising under the National Environmental Policy Act and based on conclusions in an NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, the party or participant also must show that the data or conclusions in the NRC's documents differ significantly from the data or conclusions in the applicant's environmental report.

(d) * * *

(2) *Rulings.* In ruling on a request for hearing or petition for leave to intervene, the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on such requests must determine, among other things, whether the petitioner has an interest affected by the proceeding considering the factors enumerated in paragraph (d)(1) of this section.

(3) *Standing in enforcement proceedings.* In enforcement proceedings, the licensee or other person against whom the action is taken shall have standing.

* * * * *

(h) *Requirements applicable to States, local governmental bodies, and Federally-recognized Indian Tribes seeking party status.* (1) If a State, local governmental body (county, municipality or other subdivision), or Federally-recognized Indian Tribe seeks to participate as a party in a proceeding, it must submit a request for hearing or a petition to intervene containing at least one admissible contention, and must designate a single representative for the hearing. If a request for hearing or petition to intervene is granted, the Commission, the presiding officer or the Atomic Safety and Licensing Board ruling on the request will admit as a party to the proceeding a single designated representative of the State, a single designated representative for each local governmental body (county, municipality or other subdivision), and a single designated representative for each Federally-recognized Indian Tribe. Where a State's constitution provides that both the Governor and another State official or State governmental body may represent the interests of the State in a proceeding, the Governor and the other State official/government body will be considered separate potential parties.

(2) If the proceeding pertains to a production or utilization facility (as defined in § 50.2 of this chapter) located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, no further demonstration of standing is required. If the production or utilization facility is not located within the boundaries of the State, local governmental body, or Federally-recognized Indian Tribe seeking to participate as a party, the State, local governmental body, or Federally-recognized Indian Tribe also must demonstrate standing.

(3) In any proceeding on an application for a construction authorization for a high-level radioactive waste repository at a geologic repository operations area under parts 60 or 63 of this chapter, or an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, the Commission shall permit intervention by the State and local governmental body (county, municipality or other subdivision) in which such an area is located and by any affected Federally-recognized Indian Tribe as defined in parts 60 or 63 of this chapter if the requirements of paragraph (f) of this section are satisfied with respect to at least one contention. All other petitions for intervention in any such proceeding must be reviewed under the provisions of paragraphs (a) through (f) of this section.

(i) Answers to hearing requests, intervention petitions, and requests to admit new or amended contentions after the initial filing. Unless otherwise specified by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the request/petition—

(1) The applicant/licensee, the NRC staff, and other parties to a proceeding may file an answer to a hearing request, intervention petition, or a request to admit amended or new contentions after the initial filing within 25 days after service of the request or petition. Answers should address, at a minimum, the factors set forth in paragraphs (a) through (h) of this section insofar as these sections apply to the filing that is the subject of the answer.

(2) Except in a proceeding under § 52.103 of this chapter, the requestor/petitioner may file a reply to any answer. The reply must be filed within 7 days after service of that answer.

(3) No other written answers or replies will be entertained.

(j) *Decision on request/petition.* (1) In all proceedings other than a proceeding under § 52.103 of this chapter, the presiding officer shall issue a decision on each request for hearing or petition to intervene within 45 days of the conclusion of the initial pre-hearing conference or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies under paragraph (i) of this section. With respect to a request to admit amended or new contentions, the presiding officer shall issue a decision on each such request within 45 days of the conclusion of any pre-hearing conference that may be conducted regarding the proposed amended or new contentions or, if no pre-hearing conference is conducted, within 45 days after the filing of answers and replies, if any. In the event the presiding officer cannot issue a decision within 45 days, the presiding officer shall issue a notice advising the Commission and the parties, and the notice shall include the expected date of when the decision will issue.

(2) The Commission, acting as the presiding officer, shall expeditiously grant or deny the request for hearing in a proceeding under § 52.103 of this chapter. The Commission's decision may not be the subject of any appeal under § 2.311.

9. In § 2.311, paragraph (b) is revised to read as follows:

§ 2.311 Interlocutory review of rulings on requests for hearings/petitions to intervene, selection of hearing procedures, and requests by potential parties for access to sensitive unclassified non-safeguards information and safeguards information.

* * * * *

(b) These appeals must be made as specified by the provisions of this section, within 25 days after the service of the order. The appeal must be initiated by the filing of a notice of appeal and accompanying supporting brief. Any party who opposes the appeal may file a brief in opposition to the appeal within 25 days after service of the appeal. The supporting brief and any answer must conform to the requirements of § 2.341(c)(2). No other appeals from rulings on requests for hearings are allowed.

* * * * *

10. In § 2.314, paragraph (c)(3) is revised to read as follows:

§ 2.314 Appearance and practice before the Commission in adjudicatory proceedings.

* * * * *

(c) * * *

(3) Anyone disciplined under this section may file an appeal with the Commission within 25 days after issuance of the order. The appeal must be in writing and state concisely, with supporting argument, why the appellant believes the order was erroneous, either as a matter of fact or law. The Commission shall consider each appeal on the merits, including appeals in cases in which the suspension period has already run. If necessary for a full and fair consideration of the facts, the Commission may conduct further evidentiary hearings, or may refer the matter to another presiding officer for development of a record. In the latter event, unless the Commission provides specific directions to the presiding officer, that officer shall determine the procedure to be followed and who shall present evidence, subject to applicable provisions of law. The hearing must begin as soon as possible. In the case of an attorney, if no appeal is taken of a suspension, or, if the suspension is upheld at the conclusion of the appeal, the presiding officer, or the Commission, as appropriate, shall notify the State bar(s) to which the attorney is admitted. The notification must include copies of the order of suspension, and, if an appeal was taken, briefs of the parties, and the decision of the Commission.

* * * * *

11. In § 2.315, paragraph (c) is revised to read as follows:

§ 2.315 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford an interested State, local governmental body (county, municipality or other subdivision), and Federally-recognized Indian Tribe that has not been admitted as a party under § 2.309, a reasonable opportunity to participate in a hearing. The participation of any State, local governmental body, or Federally-recognized Indian Tribe shall be limited to unresolved issues and contentions, and issues and contentions that are raised after the State, local governmental body, or Federally-recognized Indian Tribe becomes a participant. Each State, local governmental body, and Federally-recognized Indian Tribe shall, in its request to participate in a hearing, designate a single representative for the hearing. The representative shall be permitted to introduce evidence, interrogate witnesses where cross examination by the parties is permitted, advise the Commission without requiring the representative to take a position with respect to the issue, file proposed findings in those proceedings where findings are permitted, and petition for review by the Commission under § 2.341 with respect to the admitted contentions. The

representative shall identify those contentions on which they will participate in advance of any hearing held.

* * * * *

12. In § 2.319, paragraph (l) is revised, paragraph (r) is redesignated as paragraph (s), and a new paragraph (r) is added to read as follows:

§ 2.319 Power of the presiding officer.

* * * * *

(l) Refer rulings to the Commission under § 2.323(f)(1), or certify questions to the Commission for its determination, either in the presiding officer's discretion, or on petition of a party under § 2.323(f)(2), or on direction of the Commission.

* * * * *

(r) Establish a schedule for briefs and oral arguments to decide any admitted contentions that, as determined by the presiding officer, constitute pure issues of law.

* * * * *

13. In § 2.323, paragraph (f) is revised to read as follows:

§ 2.323 Motions.

* * * * *

(f) *Referral and certifications to the Commission.* (1) If, in the judgment of the presiding officer, the presiding officer's decision raises significant and novel legal or policy issues, or prompt decision by the Commission is necessary to materially advance the orderly disposition of the proceeding, then the presiding officer may promptly refer the ruling to the Commission. The presiding officer shall notify the parties of the referral either by announcement on-the-record or by written notice if the hearing is not in session.

(2) A party may petition the presiding officer to certify a question to the Commission for early review. The presiding officer shall apply the criteria in § 2.341(f)(1) in determining whether to grant the petition for certification. No motion for reconsideration of the presiding officer's ruling on a petition for certification will be entertained.

* * * * *

14. In § 2.335, paragraphs (b), (c), and (e) are revised to read as follows:

§ 2.335 Consideration of Commission rules and regulations in adjudicatory proceedings.

* * * * *

(b) A participant to an adjudicatory proceeding subject to this part may petition that the application of a specified Commission rule or regulation or any provision thereof, of the type described in paragraph (a) of this section, be waived or an exception be made for the particular proceeding. The sole ground for petition of waiver or exception is that special circumstances with respect to the subject matter of the particular proceeding are such that the application of the rule or regulation (or a provision of it) would not serve the purposes for which the rule or regulation was adopted. The petition must be accompanied by an affidavit that identifies the specific aspect or aspects of the subject matter of the proceeding as to which the application of the rule or regulation (or provision of it) would not serve the purposes for which the rule or regulation was adopted. The affidavit must state with particularity the special circumstances alleged to justify the waiver or exception requested. Any other participant may file a response by counter-affidavit or otherwise.

(c) If, on the basis of the petition, affidavit, and any response permitted under paragraph (b) of this section, the presiding officer determines that the petitioning participant has not made a *prima facie* showing that the application of the specific Commission rule or regulation (or provision thereof) to a particular aspect or aspects of the subject matter of the proceeding would not serve the purposes for which the rule or regulation was adopted and that application of the rule or regulation should be waived or an exception granted, no evidence may be received on that matter and no discovery, cross examination, or argument directed to the matter will be permitted, and the presiding officer may not further consider the matter.

* * * * *

(e) Whether or not the procedure in paragraph (b) of this section is available, a participant to an initial or renewal licensing proceeding may file a petition for rulemaking under § 2.802.

15. In § 2.336, the introductory text to paragraph (b) and paragraph (d) are revised to read as follows:

§ 2.336 General discovery.

* * * * *

(b) Except for enforcement proceedings initiated under subpart B of this part and conducted under subpart G of this part, and proceedings conducted under subpart J of this part, or as otherwise ordered by the Commission, the presiding officer, or the Atomic Safety and Licensing Board assigned to the proceeding, the NRC staff must, within 30 days of the issuance of the order granting a request for hearing or petition to intervene and without further order or request from any party, disclose or provide to the extent available (but excluding those documents for which there is a claim of privilege or protected status):

* * * * *

(d) The duty of disclosure under this section is continuing. A disclosure update must be made every thirty (30) days after initial disclosures. The disclosure update is limited to documents subject to disclosure under this section that have not been disclosed in a prior update and that are developed, obtained, or discovered during the period that runs from the 5 business days before last disclosure update to 5 business days before the filing of the update. The duty of mandatory disclosure with respect to new information or documents relevant to a contention ends when presiding officer issues a decision on that contention, or at such other time as may be specified by the presiding officer or the Commission.

* * * * *

16. Section 2.340 is revised to read as follows:

§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

(a) *Initial decision—production or utilization facility operating license.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for an operating license or renewed license (including an amendment to or renewal of an operating license or renewed license) for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a construction permit, operating license, or renewed license, or the amendment of an operating or renewed license where the NRC has not made a determination of no significant hazards consideration, the

Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a construction permit, operating license, or renewed license where the NRC has made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(b) *Initial decision—combined license under 10 CFR part 52.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a combined license under part 52 of this chapter (including an amendment to or renewal of combined license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a combined license under part 52 of this chapter, or the amendment of a combined license where the NRC has not made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a combined license under part 52 of this chapter where the NRC has made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(c) *Initial decision on findings under 10 CFR 52.103 with respect to acceptance criteria in nuclear power reactor combined licenses.* In any initial decision under § 52.103(g) of this chapter with respect to whether acceptance criteria have been or will be met, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties, and any matter designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties, but identified by the presiding officer as matters requiring further examination, shall be referred to the Commission for its determination; the Commission may, in its discretion, treat any of these referred matters as a request for action under § 2.206 and process the matter in accordance with § 52.103(f) of this chapter.

(d) *Initial decision—manufacturing license under 10 CFR part 52.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a manufacturing license under subpart C of part 52 of this chapter (including an amendment to or renewal of a manufacturing license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer also shall make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, inter alia, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 of this chapter, or the amendment of a manufacturing license, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the initial issuance or renewal of a manufacturing license under subpart C of part 52 of this chapter, or the amendment of a manufacturing license, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, may issue the license, permit, or license amendment in accordance with § 2.1202(a) or § 2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the license, permit, or license amendment is issued under § 2.1202 or § 2.1403, then the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, shall issue, deny, or appropriately condition the license, permit, or license amendment in accordance with the presiding officer's initial decision.

(e) *Initial decision—other proceedings not involving production or utilization facilities.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In a proceeding not involving production or utilization facilities, the

presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties to the proceeding, and on any matters designated by the Commission to be decided by the presiding officer. Matters not put into controversy by the parties, but identified by the presiding officer as requiring further examination, must be referred to the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate. Depending on the resolution of those matters, the Director, Office of Nuclear Material Safety and Safeguards or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, after making the requisite findings, shall issue, deny, revoke or appropriately condition the license, or take other action as necessary or appropriate.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding under this paragraph, the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue, deny, or appropriately condition the permit, license, or license amendment in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding under this paragraph, the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, may issue the permit, license, or amendment in accordance with § 2.1202(a) or § 2.1403(a) before the presiding officer's initial decision becomes effective. If, however, the presiding officer's initial decision becomes effective before the permit, license, or amendment is issued under § 2.1202 or § 2.1403, then the Commission, the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue, deny, or appropriately condition the permit, license, or amendment in accordance with the presiding officer's initial decision.

(f) *Immediate effectiveness of certain presiding officer decisions.* A presiding officer's initial decision directing the issuance or amendment of a limited work authorization under § 50.10 of this chapter, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, a manufacturing license under subpart F of part 52 of this chapter, or a license under part 72 of this chapter to store spent fuel in an independent spent fuel storage facility (ISFSI) or a monitored retrievable storage installation (MRS), an initial decision directing issuance of a license under part 61 of this chapter, or an initial decision under § 52.103(g) of this chapter that acceptance criteria in a combined license have been met, is immediately effective upon issuance unless the presiding officer finds that good cause has been shown by a party why the initial decision should not become immediately effective.

(g)–(h) [Reserved]

(i) *Issuance of authorizations, permits, and licenses—production and utilization facilities.* The Commission, the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall issue a limited work authorization under § 50.10 of this chapter, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization under part 50 of this chapter, an operating license under part 50 of this chapter, a combined license under subpart C of part 52 of this chapter, or a manufacturing license under subpart F of part 52 of this chapter within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the authorization, permit or license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(j) *Issuance of finding on acceptance criteria under 10 CFR 52.103.* The Commission, the Director, Office of New Reactors, or the Director, Office of Nuclear Reactor Regulation, as appropriate, shall make the finding under § 52.103(g) of this chapter that the acceptance criteria in a combined license have been, or will be met, within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made the finding under § 52.103(g) of this chapter that acceptance criteria have been, or will be met, for those acceptance criteria which are not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

(k) *Issuance of other licenses.* The Commission or the Director, Office of Nuclear Material Safety and Safeguards, or the Director, Office of Federal and State Materials and Environmental Management Programs, as appropriate, shall issue a license, including a license under part 72 of this chapter to store spent fuel in either an independent spent fuel storage facility (ISFSI) located away from a reactor site or at a monitored retrievable storage installation (MRS), within 10 days from the date of issuance of the initial decision:

(1) If the Commission or the appropriate Director has made all findings necessary for issuance of the license, not within the scope of the initial decision of the presiding officer; and

(2) Notwithstanding the pendency of a petition for reconsideration under § 2.345, a petition for review under § 2.341, or a motion for stay under § 2.342, or the filing of a petition under § 2.206.

17. In § 2.341, paragraphs (a), (b)(1), (b)(3), (c), and (f)(1) are revised to read as follows:

§ 2.341 Review of decisions and actions of a presiding officer.

(a)(1) Review of decisions and actions of a presiding officer are treated under this section; provided, however, that no party may request a further Commission review of a Commission determination to allow a period of interim operation under § 52.103(c) of this chapter. This section does not apply to appeals under § 2.311 or to appeals in the high-level waste proceeding, which are governed by § 2.1015.

(2) Within 120 days after the date of a decision or action by a presiding officer, or within 120 days after a petition for review of the decision or action has been served under paragraph (b) of this section, whichever is greater, the Commission may review the decision or action on its own motion, unless the Commission, in its discretion, extends the time for its review.

(b)(1) Within 25 days after service of a full or partial initial decision by a presiding officer, and within 25 days

after service of any other decision or action by a presiding officer with respect to which a petition for review is authorized by this part, a party may file a petition for review with the Commission on the grounds specified in paragraph (b)(4) of this section. Unless otherwise authorized by law, a party to an NRC proceeding must file a petition for Commission review before seeking judicial review of an agency action.

* * * * *

(3) Any other party to the proceeding may, within 25 days after service of a petition for review, file an answer supporting or opposing Commission review. This answer may not be longer than 25 pages and should concisely address the matters in paragraph (b)(2) of this section to the extent appropriate. The petitioning party may file a reply brief within 10 days of service of any answer. This reply brief may not be longer than 5 pages.

* * * * *

(c)(1) If within 120 days after the filing of a petition for review the Commission does not grant the petition, in whole or in part, the petition is deemed to be denied, unless the Commission, in its discretion, extends the time for its consideration of the petition and any answers to the petition.

(2) If a petition for review is granted, the Commission may issue an order specifying the issues to be reviewed and designating the parties to the review proceeding. The Commission may, in its discretion, decide the matter on the basis of the petition for review or it may specify whether any briefs may be filed.

(3) Unless the Commission orders otherwise, any briefs on review may not exceed 30 pages in length, exclusive of pages containing the table of contents, table of citations, and any addendum containing appropriate exhibits, statutes, or regulations. A brief in excess of 10 pages must contain a table of contents with page references and a table of cases (alphabetically arranged), cited statutes, regulations, and other authorities, with references to the pages of the brief where they are cited.

* * * * *

(f) * * *

(1) A ruling referred or question certified to the Commission under §§ 2.319(l) or 2.323(f) may be reviewed if the certification or referral raises significant and novel legal or policy issues, or resolution of the issues would materially advance the orderly disposition of the proceeding.

* * * * *

18. In § 2.346, paragraphs (e) and (j) are revised to read as follows:

§ 2.346 Authority of the Secretary.

* * * * *

(e) Extend the time for the Commission to grant review on its own motion under § 2.341;

* * * * *

(j) Take action on procedural or other minor matters.

19. In § 2.347, paragraphs (e)(1)(i) and (e)(1)(ii) are revised to read as follows:

§ 2.347 Ex parte communications.

* * * * *

(e)(1) * * *

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312; or

(ii) Whenever the interested person or Commission adjudicatory employee responsible for the communication has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312.

* * * * *

20. In § 2.348, paragraphs (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 2.348 Separation of functions.

* * * * *

(d)(1) * * *

(i) When a notice of hearing or other comparable order is issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312; or

(ii) Whenever an NRC officer or employee who is or has reasonable cause to believe he or she will be engaged in the performance of an investigative or litigating function or a Commission adjudicatory employee has knowledge that a notice of hearing or other comparable order will be issued in accordance with §§ 2.104(a), 2.105(e)(2), 2.202(c), 2.205(e), or 2.312.

* * * * *

21. In § 2.704, paragraph (a)(3) is revised to read as follows:

§ 2.704 Discovery-required disclosures.

(a) * * *

(3) Unless otherwise stipulated by the parties or directed by order of the presiding officer, these disclosures must be made within 30 days of the order granting a hearing. A party must make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its disclosures because it has not fully completed its investigation of the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures. The duty of disclosure under this section is continuing. A disclosure update must be made every 30 days after initial disclosures. The disclosure update must contain any information or documents subject to disclosure under this section that have not been disclosed in a prior update and that are developed, obtained, or discovered during the period that runs from the last disclosure update to 5 business days before the filing of the update. The duty of mandatory disclosure with respect to new information or documents relevant to a contention ends when the hearing with respect to that contention has concluded, or at such other time as may be specified by the presiding officer or the Commission.

* * * * *

22. In § 2.705, the introductory text to paragraph (b)(2) is revised to read as follows:

§ 2.705 Discovery-additional methods.

* * * * *

(b) * * *

(2) Upon his or her own initiative after reasonable notice or in response to a motion filed under paragraph (c) of this section, the presiding officer may set limits on the number of depositions and interrogatories, and may also limit the length of depositions under § 2.706 and the number of requests under §§ 2.707 and 2.708. The presiding officer shall limit the frequency or extent of use of the discovery methods otherwise permitted under these rules if he or she determines that:

* * * * *

23. In § 2.709, paragraphs (a)(6) and (a)(7) are added to read as follows:

§ 2.709 Discovery against NRC staff.

(a) * * *

(6)(i) In a proceeding arising from an order issued under §§ 2.202 or 2.205, the NRC staff must, except to the extent otherwise stipulated or directed by order of the presiding officer or the Commission, provide to the other parties within thirty (30) days of the order granting a hearing and without awaiting a discovery request:

(A) All NRC staff documents relevant to disputed issues alleged with particularity in the pleadings, including any Office of Investigations report and supporting exhibits, and any Office of Enforcement documents regarding the order; and

(B) A list of all documents otherwise responsive to paragraph (a)(6)(i)(A) of this section for which a claim of privilege or protected status is being made, together with sufficient information for assessing the claim of privilege or protected status of the documents.

(ii) The duty of disclosure under this section is continuing. A disclosure

update must be made every thirty (30) days after initial disclosures. The disclosure update must contain any information or documents subject to disclosure under this section that have not been disclosed in a prior update and that are developed, obtained, or discovered during the period that runs from the last disclosure update to five (5) business days before the filing of the update. The duty of mandatory disclosure with respect to new information or documents relevant to a contention ends when the hearing with respect to that contention has concluded, or at such other time as may be specified by the presiding officer or the Commission.

(7) When any document, data compilation, or other tangible thing that must be disclosed is publicly available from another source, such as at the NRC Web site, *http://www.nrc.gov*, and/or the NRC Public Document Room, a sufficient disclosure would be the location (including the ADAMS accession number, when available), the title and a page reference to the relevant document, data compilation, or tangible thing.

* * * * *

24. In § 2.710, paragraph (a) is revised to read as follows:

§ 2.710 Motions for summary disposition.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. Summary disposition motions must be filed no later than 20 days after the close of discovery. The moving party shall attach to the motion a short and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within 20 days after service of the motion. The party shall attach to any answer opposing the motion a short and concise statement of the material facts as to which it is contended there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be considered to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within 10 days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses to the motion will be entertained.

* * * * *

25. In § 2.802, paragraph (d) is revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(d) The petitioner may request the Commission to suspend all or any part of any licensing proceeding to which the petitioner is a participant pending disposition of the petition for rulemaking.

* * * * *

Subpart L—Simplified Hearing Procedures for NRC Adjudications

26. The heading of subpart L is revised to read as set forth above:

27. In § 2.1202, the introductory text of paragraph (a) is revised to read as follows:

§ 2.1202 Authority and role of NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter which is the subject of the hearing and as authorized by law, the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the underlying regulatory matter for which a hearing was provided. When the NRC staff takes its action, it must notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's explanation why the public health and safety is protected and why the action is in accord with the common defense and security despite the pendency of the contested matter before the presiding officer. The NRC staff's action on the matter is effective upon issuance by the staff, except in matters involving:

* * * * *

28. In § 2.1205, paragraph (a) is revised to read as follows:

§ 2.1205 Summary disposition.

(a) Unless the presiding officer or the Commission directs otherwise, motions for summary disposition may be submitted to the presiding officer by any party no later than 45 days before the commencement of hearing. The motions must be in writing and must include a written explanation of the basis of the motion. The moving party must attach a short and concise statement of material facts for which the moving party contends that there is no genuine issue to be heard, and affidavits to support statements of fact. Motions for summary disposition must be served on the parties and the Secretary at the same time that they are submitted to the presiding officer.

* * * * *

29. Section 2.1209 is revised to read as follows:

§ 2.1209 Findings of fact and conclusions of law.

Each party shall file written post-hearing proposed findings of fact and conclusions of law on the contentions addressed in an oral hearing under § 2.1207 or a written hearing under § 2.1208 within 30 days of the close of the hearing or at such other time as the presiding officer directs. Proposed findings of fact and conclusions of law must conform to the format requirements in § 2.712(c).

30. In § 2.1213, paragraph (f) is added to read as follows:

§ 2.1213 Application for a stay.

* * * * *

(f) Stays are not available on matters limited to whether a no significant hazards consideration determination was proper in proceedings on power reactor license amendments.

31. Section 2.1300 is revised to read as follows:

§ 2.1300 Scope of subpart M.

The provisions of this subpart, together with the generally applicable intervention provisions in subpart C of this part, govern all adjudicatory proceedings on an application for the direct or indirect transfer of control of an NRC license when the transfer requires prior approval of the NRC under the Commission's regulations, governing statutes, or pursuant to a license condition. This subpart provides the only mechanism for requesting hearings on license transfer requests, unless contrary case specific orders are issued by the Commission.

§ 2.1304 [Removed]

32. Section 2.1304 is removed.

33. In § 2.1316, paragraph (c) is revised to read as follows:

§ 2.1316 Authority and role of NRC staff.

* * * * *

(c)(1) Within 15 days of the issuance of the order granting requests for hearing/petitions to intervene and admitting contentions, the NRC staff must notify the presiding officer and the parties whether it desires to participate as a party, and identify the contentions on which it wishes to participate as a party. If the NRC staff desires to be a party thereafter, the NRC staff must notify the presiding officer and the parties, and identify the contentions on which it wishes to participate as a party,

and make the disclosures required by § 2.336(b)(3) through (b)(5) unless accompanied by an affidavit explaining why the disclosures cannot be provided to the parties with the notice.

(2) Once the NRC staff chooses to participate as a party, it will have all the rights and responsibilities of a party with respect to the admitted contention/matter in controversy on which the staff chooses to participate.

34. In § 2.1403, the introductory text of paragraph (a) is revised to read as follows:

§ 2.1403 Authority and role of the NRC staff.

(a) During the pendency of any hearing under this subpart, consistent with the NRC staff's findings in its review of the application or matter that is the subject of the hearing and as authorized by law, the NRC staff is expected to promptly issue its approval or denial of the application, or take other appropriate action on the matter that is the subject of the hearing. When the NRC staff takes its action, it must notify the presiding officer and the parties to the proceeding of its action. That notice must include the NRC staff's explanation why the public health and safety is protected and why the action is in accord with the common defense and security despite the pendency of the contested matter before the presiding officer. The NRC staff's action on the matter is effective upon issuance, except in matters involving:

* * * * *

35. In § 2.1407, paragraphs (a)(1) and (a)(3) are revised to read as follows:

§ 2.1407 Appeal and Commission review of initial decision.

(a)(1) Within 25 days after service of a written initial decision, a party may file a written appeal seeking the Commission's review on the grounds specified in paragraph (b) of this section. Unless otherwise authorized by law, a party must file an appeal with the Commission before seeking judicial review.

* * * * *

(3) Any other party to the proceeding may, within 25 days after service of the appeal, file an answer supporting or opposing the appeal. The answer may not be longer than 20 pages and should concisely address the matters specified in paragraph (a)(2) of this section. The appellant does not have a right to reply. Unless it directs additional filings or oral arguments, the Commission will decide the appeal on the basis of the filings permitted by this paragraph.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

36. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80. and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

37. In § 51.4, the definition of *NRC staff* is revised to read as follows:

§ 51.4 Definitions.

* * * * *

NRC staff means any NRC officer or employee or his/her authorized representative, except a Commissioner, a member of a Commissioner's immediate staff, an Atomic Safety and Licensing Board, a presiding officer, an administrative judge, an administrative law judge, or any other officer or employee of the Commission who performs adjudicatory functions.

* * * * *

38. In § 51.34, paragraph(b) is revised to read as follows:

§ 51.34 Preparation of finding of no significant impact.

* * * * *

(b) When a hearing is held on the proposed action under the regulations in subpart G of part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the appropriate NRC staff director will prepare a proposed finding of no significant impact, which may be subject to modification as a result of review and decision as appropriate to the nature and scope of the proceeding. In such cases, the presiding officer, or the Commission acting as a collegial body, as appropriate, will issue the final finding of no significant impact.

39. In § 51.102, paragraph (c) is revised to read as follows:

§ 51.102 Requirement to provide a record of decision; preparation.

* * * * *

(c) When a hearing is held on the proposed action under the regulations in part 2 of this chapter or when the action can only be taken by the Commissioners acting as a collegial body, the initial decision of the presiding officer or the final decision of the Commissioners acting as a collegial body will constitute the record of decision. An initial or final decision constituting the record of decision will be distributed as provided in § 51.93.

40. In § 51.109, paragraph (f) is revised to read as follows:

§ 51.109 Public hearings in proceedings for issuance of materials license with respect to a geologic repository.

* * * * *

(f) In making the determinations described in paragraph (e) of this section, the environmental impact statement will be deemed modified to the extent that findings and conclusions differ from those in the final statement prepared by the Secretary of Energy, as it may have been supplemented. The initial decision will be distributed to any persons not otherwise entitled to receive it who responded to the request in the notice of docketing, as described in § 51.26(c). If the Commission reaches conclusions different from those of the presiding officer with respect to such matters, the final environmental impact statement will be deemed modified to that extent and the decision will be similarly distributed.

* * * * *

41. Section 51.125 is revised to read as follows:

§ 51.125 Responsible official.

The Executive Director for Operations shall be responsible for overall review of NRC NEPA compliance, except for matters under the jurisdiction of a presiding officer, administrative judge, administrative law judge, Atomic Safety and Licensing Board, or the Commission acting as a collegial body.

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

42. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842). Section 54.17 also issued under E.O. 12829, 3 CFR, 1993 Comp., p.570; E.O. 12958, as

amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p.391.

43. Section 54.27 is revised to read as follows:

§ 52.27 Hearings.

A notice of an opportunity for a hearing will be published in the **Federal Register** in accordance with 10 CFR 2.105 and 2.309. In the absence of a request for a hearing filed within 60 days by a person whose interest may be affected, the Commission may issue a renewed operating license or renewed combined license without a hearing upon a 30-day notice and publication in the **Federal Register** of its intent to do so.

Dated at Rockville, Maryland, this 22nd day of February 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–4345 Filed 2–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–13; NRC–2010–0088]

Dan Kane; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM) submitted by Dan Kane. Mr. Kane requested that the NRC rescind the Waste Confidence Rule, suspend all ongoing reactor licensing proceedings, and phase out operations at all operating nuclear power plants. The NRC is denying the petition because, contrary to the assertions made in the PRM, the Commission's Waste Confidence Decision and Rule consider the political uncertainty discussed in the petition and do not depend on the availability of a repository at Yucca Mountain, Nevada.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine, and have copied for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

• *Federal rulemaking Web site:* Public comments and supporting materials related to this petition for rulemaking can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0088. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *telephone:* 301–415–8579, *e-mail: tison.campbell@nrc.gov;* or Lisa London, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *telephone:* 301–415–3233, *e-mail: lisa.london@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

Title 10 of the Code of Federal Regulations (10 CFR), Section 2.802, Petition for rulemaking, provides an opportunity for any interested person to petition the Commission to issue, amend, or rescind any regulation. On February 2, 2010, Dan Kane submitted a PRM requesting that the NRC rescind 10 CFR 51.23, Temporary storage of spent fuel after cessation of reactor operation—generic determination of no significant environmental impact, also known as the Waste Confidence Rule. (ADAMS Accession No. ML100570095 (Petition)).

Mr. Kane believes that rescinding 10 CFR 51.23 would require the NRC to cease licensing new nuclear power plants and to suspend the licenses of existing power plants. He argues that the Waste Confidence Rule is no longer valid because the Department of Energy has filed a motion to withdraw its application for a spent nuclear fuel (SNF) and high-level waste (HLW) disposal facility at Yucca Mountain and because he believes that the Commission must "adequately anticipate and address future political considerations with regard to waste disposal" as part of its Waste Confidence Decision and Rule. (Petition at 3). The NRC reviewed Mr. Kane's petition and determined that the petition met the minimum sufficiency requirements of 10 CFR 2.802. Accordingly, the NRC docketed the request as PRM–51–13 on February 25, 2010; the NRC notified the public of the opportunity to submit comments on the petition in the **Federal Register** notice announcing the docketing of the petition. (75 FR 16360; April 1, 2010). The NRC received 10 comments on the PRM: five comments supported granting the petition, one asked the NRC to provide additional information on the basis for the Waste Confidence Decision and Rule, and four argued that the petition should be denied.

Background

In his February 2, 2010 PRM, Dan Kane requested that the NRC "[c]ease licensing of new nuclear power plants and begin an orderly phase out of existing operating nuclear power plants until the Commission can be assured not only of the technical and economic certainties of a waste disposition decision, but also of the political certainties associated with that disposition." (Petition at 3). Mr. Kane believes that the uncertainty regarding the licensing of a nuclear waste repository at Yucca Mountain undermines the basis for the NRC's regulations at 10 CFR 51.23, which he believes provide the basis for the continued operation and licensing of nuclear power plants. (*Id.*) He contends that the then proposed revisions to Finding 2 (of the five findings in the Waste Confidence Decision), which provides part of the basis for 10 CFR 51.23, "was grounded in the belief that the Yucca Mountain repository would become available within the first quarter of the twenty-first century or perhaps a few years later." (*Id.* at 2). Mr. Kane also believes that the NRC has not complied with its obligations under the National Environmental Policy Act (NEPA) because "[t]he spirit of NEPA compliance cannot be satisfied by assuming some unknown future solution to an existing challenge." (*Id.*) As discussed above, Mr. Kane believes that this existing challenge is political. (*Id.* at 2–3). Further, Mr. Kane argues that the deficiency in the Waste Confidence Decision and Rule results from the inability of the Commission to "adequately anticipate and address future political considerations with regard to waste disposal." (*Id.* at 3).

NRC Evaluation

The NRC does not agree with Mr. Kane that 10 CFR 51.23 should be rescinded.

Whether the Withdrawal of the Yucca Mountain Application Necessitates the Revocation of the Waste Confidence Decision and Rule

The basis for Mr. Kane's petition to revoke the Waste Confidence Rule is the Department of Energy's motion to withdraw the Yucca Mountain license application and the Obama Administration's decision not to seek further funding for the program. (Petition at 2). Despite Mr. Kane's assertions to the contrary, the Commission has stated on numerous occasions that the Waste Confidence Decision and Rule are not based on an assumption that Yucca Mountain will become available. In fact, the Waste Confidence Decision and Rule assume that Yucca Mountain will not be built. (*See, e.g.,* 55 FR 38494; September 18, 1990, 75 FR 81040; December 23, 2010). Therefore, Mr. Kane's argument that the Waste Confidence Decision and Rule should be revoked because they relied upon the eventual availability of Yucca Mountain must be rejected because it does not accurately consider the basis for the Decision and Rule.

Mr. Kane is correct that the Commission cannot speculate when the political and societal obstacles to the successful completion of a repository program will be overcome. The Commission has acknowledged these difficulties in the recently published update to its Waste Confidence Decision and Rule. (*See,* 75 FR 81048 and 81063). However, it does not follow from the Commission's acknowledgement of the societal and political obstacles to a successful repository program that the Commission cannot have reasonable assurance that disposal capacity will be available when needed as expressed in the Waste Confidence Decision and Rule. Although the Commission cannot specifically predict when a repository will become available, the Commission can have reasonable assurance that a repository will become available when necessary and that the SNF and HLW in on-site and off-site storage facilities can be stored safely and without significant environmental impacts for at least 60 years after the licensed life of operation for any reactor. (*Id.* at 81048, 81063, and 81069–81074). As discussed in the analysis of Finding 2 of the Waste Confidence Decision, the Commission continues to have reasonable assurance that a repository can be licensed, opened, and in operation within 25–35 years of a Federal decision to begin a repository program. (*Id.* at 81063).

Further, the political obstacles associated with the licensing of Yucca Mountain or any other repository are not fatal to the Commission's Waste Confidence Decision and Rule. As stated above, the Commission assumed that Yucca Mountain would not be licensed in both the proposed and final updates to the Waste Confidence Decision and Rule. (*See, e.g.,* 75 FR 81040). As also discussed above, the Commission's analysis in the Waste Confidence Decision—which serves as the Environmental Assessment (the NEPA analysis) for the Waste Confidence Rule—does consider and acknowledge the political difficulties associated with the successful completion of a project to license and operate a nuclear waste repository. These difficulties informed the Commission's decision to remove a target date from Finding 2 and 10 CFR 51.23, and to adopt the "when necessary" standard in the current Finding 2 and 10 CFR 51.23. The Commission also acknowledged that if a repository is not available as the end of the 60-years of post-licensed life storage nears, it will be necessary to revisit the Waste Confidence Decision and Rule (if a subsequent update has not occurred by that time). (75 FR 81035). Further, in its September 15, 2010 Staff Requirements Memorandum approving the final update to the Waste Confidence Decision and Rule, the Commission directed the NRC staff to begin a separate longer-term rulemaking (to be supported by an Environmental Impact Statement) to assess the long-term storage of SNF and HLW. (ADAMS Accession No. ML102580229).

Contrary to Mr. Kane's assertions that the NRC has neglected its responsibilities under NEPA "by assuming some unknown future solution to an existing challenge," the NRC has not assumed some unknown future solution. The Waste Confidence Decision and Rule demonstrate that a solution—deep geologic disposal—does exist and is technically feasible. (*See, e.g.,* 75 FR 81058–81060). The unknown that prevents the Commission from providing a target date is the political and societal uncertainty surrounding the nuclear waste disposal program; the Commission addressed this uncertainty in its update to the Waste Confidence Decision. (75 FR 81062–81067). Further, the U.S. government as a whole has demonstrated its continued commitment to finding a long-term solution to the nuclear waste disposal problem. The NRC continues to have confidence that SNF and HLW can be stored safely until a disposal solution becomes available. The United States is actively examining potential solutions. The Blue Ribbon Commission on America's Nuclear Future is assessing disposal options and is expected to publish a report with recommendations at the beginning of 2012. Just because the Obama Administration has expressed a desire to abandon one specific option for SNF and HLW disposal does not mean that progress is not being made toward an ultimate disposal solution.

Whether Rescinding 10 CFR 51.23 Would Require the Cessation of Reactor Licensing

Even if the Commission were to rescind 10 CFR 51.23, it does not follow that the operation and licensing of nuclear power plants would have to cease. The Waste Confidence Rule satisfies the Commission's NEPA responsibilities for the period of time after the expiration of a license. Without the generic determination in the Waste Confidence Rule, the NRC could satisfy its NEPA obligations by including the post-licensed-life storage of SNF in the NEPA analysis for each nuclear power plant or ISFSI licensing action.

Further, the Commission's Waste Confidence Decision and Rule are not dependent on the NRC's ability to predict when the political and societal obstacles that stand in the way of opening a disposal site will be resolved. Rather, as discussed by the Court of Appeals for the DC Circuit in *Minnesota* v. *NRC,* 602 F.2d 412 (1979), the question that has to be considered by the NRC is "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007–09 [1], * * * and *if not*, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates." (*Id.* at 418 (emphasis added)). The Court further "agree[d] with the Commission that it may proceed in these matters by generic determinations." (*Id.* at 419). The first Waste Confidence Decision and Rule were issued in 1984, and updated in 1990 and 2010. The Commission continues to use the Decision and Rule to satisfy both the direction of the Court (to determine whether there is reasonable assurance that fuel can be stored safely beyond the expiration of the license) and to provide a generic determination of its obligations under NEPA to assess the environmental impacts of the storage of SNF and HLW waste after the expiration of a license.

Based upon its analysis of Mr. Kane's petition, the NRC has concluded that the petition should be denied. The petition does not provide sufficient justification to support the assertion that

[1] The licenses of the two plants at issue in this case would have expired in 2007 and 2009.

10 CFR 51.23 should be rescinded because the Commission's analysis does not consider political issues and because the Yucca Mountain repository program is no longer being funded. As discussed above, the NRC has shown that the Commission's analysis supporting the Waste Confidence Update and Rule does not depend on the availability of Yucca Mountain and does consider the political issues associated with a repository program. The NRC has also demonstrated that both the 1990 and 2010 updates to the Waste Confidence Decision and Rule assumed that Yucca Mountain would not be built. The cessation of the Yucca Mountain program, whether for political, technical, or other reasons, is irrelevant to the continued viability of the Waste Confidence Decision and Rule because, for the purposes of the Waste Confidence Decision and Rule, the NRC has consistently assumed that Yucca Mountain would not be built. The NRC is therefore denying Mr. Kane's petition for rulemaking.

Public Comments on the Petition

The NRC received 10 comments on this petition for rulemaking.

Comment 1

Neal Hunemuller submitted a comment asking that the NRC address the laws that provided the basis for the Waste Confidence Decisions (49 FR 34658; August 31, 1984, 55 FR 38474; September 18, 1990, and 75 FR 81037).

NRC Response

The Commission developed the Waste Confidence Decision and Rule as a result of several cases that set out the NRC's obligations with respect to safe storage and disposal of SNF and HLW under the Atomic Energy Act of 1954, Public Law 83–703, 68 Stat. 26 (codified as amended in scattered sections of 42 U.S.C.) (AEA) and NEPA. The AEA requires the NRC to establish standards to govern the civilian use of nuclear material and facilities, as the Commission may deem necessary to protect public health and safety and the common defense and security; and NEPA directs Federal agencies to evaluate the environmental impacts of major Federal actions that significantly affect the quality of the human environment. In 1978, the Court of Appeals for the Second Circuit held that the NRC was not required to withhold action on pending or future applications for nuclear power reactor operating licenses until it makes a determination that high-level radioactive wastes can be permanently disposed of safely. (*NRDC* v. *NRC,* 582 F.2d 166, 175 (2d Cir. 1978)). In 1979, the Court of Appeals for the DC Circuit considered whether the NRC "must take into account the safety and environmental implications of maintaining the reactor site as a nuclear waste disposal site after the expiration of the license term" if no off-site interim storage facility or ultimate disposal solution is available. (*State of Minnesota* v. *NRC,* 602 F.2d 412, 416 (1979)). The Court remanded the issue to the NRC and instructed the agency to consider "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007–09 * * * and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates." (*Id.* at 418). Further, the Court held that this finding could be made by a generic determination (*Id.* at 419). This generic determination was promulgated as the NRC's 1984 Waste Confidence Decision and Rule (49 FR 34658 and 34688).

Comment 2

Jason Hout submitted a comment opposing the petition. He argued that because operating nuclear power plants can safely store SNF, their operation should not be directly tied to the availability of SNF disposal.

NRC Response

The NRC agrees that the petition should be denied. As noted above, recent developments regarding the development and licensing of the repository at Yucca Mountain, including the Department of Energy's motion to withdraw its application, do not mean that the recent Waste Confidence Decision and Rule are invalid; the Waste Confidence Decision and Rule assume that the repository at Yucca Mountain will not be built.

Comment 3

Paul M. Krishna submitted a comment supporting the petition, which stated that the Secretary of Energy's direction to the Blue Ribbon Commission (BRC) to not consider mined geologic disposal flies in the face of the Waste Confidence Rule. He argued that the DOE's motion to withdraw the Yucca Mountain licensing application potentially results in nuclear power plant licenses violating the Waste Confidence Rule and that this violation should affect the granting of any construction permits, operating licenses, or combined construction permit and operating licenses for any future nuclear power plants. Mr. Krishna stated that the NRC needs to either grant DOE's motion to withdraw the Yucca Mountain license application and stop licensing all future nuclear power plants, or deny the motion and continue the licensing process for Yucca Mountain. Finally, Mr. Krishna questioned whether the NRC was planning to "come up with another waste confidence rule which states that on-site storage of SNF and HLW is safe and secure for another 100 years, by which time we might have a repository," which he claims "will not work."

NRC Response

The NRC believes that Mr. Krishna has misinterpreted the Secretary of Energy's direction to the BRC; the BRC was not directed to refrain from considering geologic disposal. Instead, the BRC charter specifically directs it to, "provide advice, evaluate alternatives, and make recommendations for a new plan to address these issues, including * * * Options for permanent disposal of used fuel and/or high-level nuclear *waste, including deep geologic disposal* * * *" (emphasis added) *See, http://brc.gov/pdfFiles/BRC_Charter.pdf.*

The NRC also disagrees with Mr. Krishna's assertion that the withdrawal of the Yucca Mountain license application would result in current or future power plant licenses violating the Waste Confidence Rule. As discussed above, the Waste Confidence Rule is a generic determination of the environmental impacts of post-licensed life storage, which does not depend on a disposal site at Yucca Mountain. Further, both the Waste Confidence Decision and Rule assume that Yucca Mountain will not be built. For the purposes of the update to the Waste Confidence Decision and Rule, the Commission has consistently assumed, in both the proposed and final Rule and Decision, that Yucca Mountain would not be built (73 FR 59556; October 9, 2008 and 75 FR 81040). The Waste Confidence Decision and Rule are based on technological developments, increased scientific understanding, and a review of international experience and progress with repositories, not the ultimate availability of the Yucca Mountain repository (75 FR 81032 and 81037).

As noted previously, the Waste Confidence Decision and Rule are separate from the Yucca Mountain licensing decision—they assume that a repository is not constructed at the Yucca Mountain site. It does not follow from the NRC's pending decision on the DOE's motion to withdraw the Yucca Mountain application that the licensing of new nuclear power plants would have to cease if the DOE's motion is granted. Whatever decision the Commission eventually makes in the

Yucca Mountain proceeding will have no direct effect on the Waste Confidence Decision and Rule.

Mr. Krishna also questioned whether the NRC plans to conduct another Waste Confidence rulemaking to look at storage for more than 60 years after the end of licensed life. In the Staff Requirements Memorandum for the recent update to the Waste Confidence Decision and Rule, the Commission instructed the staff to prepare a plan for a longer-term rulemaking that would update the Waste Confidence Decision and Rule to address the impacts of storing SNF for more than the 120 years considered in the current Waste Confidence Rule. (ADAMS Accession No. ML102580229). Mr. Krishna's assertion that a longer-term Waste Confidence Rule would not work is speculative. NRC rulemakings are conducted in a manner to ensure that the agency's actions comply with applicable laws (*e.g.,* the AEA, the Administrative Procedure Act, and NEPA). NRC rulemaking procedures will provide an opportunity for public comment when Mr. Krishna can comment on the actual substance of a proposed rule once it is developed.

Comment 4

James Blaylock commented that continued nuclear power generation is based on a solution to nuclear waste disposal, and that without a defined program the Federal government has now invalidated that commitment. Mr. Blaylock stated that long-term storage is not an acceptable approach, and that he supports the petition.

NRC Response

As noted in Finding 4 of the Commission's Waste Confidence Decision, the Commission finds reasonable assurance that SNF generated in any reactor can be stored safely without significant environmental impacts for at least 60 years beyond the licensed life for operation (which may include the term of a revised or renewed license) of that reactor in a combination of storage in its SNF storage basin and either onsite or offsite independent spent fuel storage installations.

The Commission does not agree that the Federal government has invalidated its commitment to provide for SNF disposal. The Federal government continues to evaluate options for the ultimate disposal of SNF and HLW; the Waste Confidence Decision does not consider the indefinite storage of SNF; disposal is still the ultimate goal (75 FR 81041); and the Nuclear Waste Policy Act is still the law. The Act continues to mandate disposal in a repository, the collection of funds for the Nuclear Waste Fund, and that the Federal Government "has the responsibility to provide for the permanent disposal of" HLW and SNF. (42 U.S.C. 10131 (2006)). Concurrent with its recent motion to withdraw the Yucca Mountain application, the Secretary of Energy created the Blue Ribbon Commission on America's Nuclear Future to evaluate, assess, and advise on possible alternatives for storage, management, and ultimate disposal of SNF and HLW (part of this evaluation will explore the need for additional or amended legislation). (*http://brc.gov/pdfFiles/BRC_Charter.pdf*). These measures demonstrate the Federal government's continued commitment to addressing the nuclear waste disposal problem even in the absence of the development of a repository at Yucca Mountain.

Comment 5

David Hathcock submitted a comment, which stated in full: "I agree with this Proposed Rule change. I am a concerned individual."

NRC Response

Although Mr. Hathcock expressed support for the petition, the NRC believes that its decision to deny the petition is correct. As stated above:

(1) The Department of Energy's decision to withdraw its application for a repository at Yucca Mountain does not mean that the Waste Confidence Decision and Rule should be revoked. The Waste Confidence Decision and Rule assume that Yucca Mountain will not be built.

(2) Revocation of 10 CFR 51.23 would not result in the end of reactor licensing or relicensing. Without the Waste Confidence Decision and Rule, the NEPA evaluation of post-licensed life storage of SNF would be included in each individual licensing action.

Comment 6

Winston Hamilton Jr., P.E. submitted a comment opposing the petition. Mr. Hamilton argued that cutting the funding to the Yucca Mountain project is not directly related to the nuclear industry. He also stated that he was "surprised" to see such a notice published in the **Federal Register** by the NRC.

NRC Response

The NRC agrees that the petition should be denied. As noted above, the Waste Confidence Decision and Rule assume that a repository is not built at Yucca Mountain.

The NRC also agrees that cutting the funding for the Yucca Mountain project does not immediately affect operating reactor performance. As noted in Finding 3 of the Waste Confidence Decision, the Commission finds reasonable assurance that HLW and SNF will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all HLW and SNF. (75 FR 81067).

With respect to publication of the PRM, the NRC published the PRM because, in accordance with 10 CFR 2.802(e), the NRC found that the petition satisfied the requirements of § 2.802(c).

Comment 7

Noah Miska submitted a comment supporting the petition. Mr. Miska expressed support for the ultimate goal of the petition—the cessation of new reactor licensing and the phasing out of existing plants—because he believes that granting the petition is "necessary to make up for the loss of the proposed Yucca Mountain nuclear waste storage facility." Further, Mr. Miska argued that granting the petition would result in the end of the production of new SNF and HLW, which he believes represents "too great a risk to the public's well being to justify their existence." Mr. Miska also noted that the reduction in nuclear power capacity could be offset by "investments in wind and/or solar infrastructure, which could potentially create many thousands of new jobs."

NRC Response

As noted in the response to Mr. Kane's petition, the revocation of the Waste Confidence Rule would not result in the end of nuclear reactor licensing or relicensing. Rather, the NEPA evaluation of post-licensed-life storage would shift from the generic determination in the Waste Confidence Rule to individual licensing proceedings.

Mr. Miska is correct that reaching the ultimate goal of the petition—the cessation of new reactor licensing and the phasing out of existing plants—would result in the end of the production of civilian SNF. But as discussed generically in the Waste Confidence Decision and specifically in each licensing decision, the NRC has evaluated the risks of licensing these facilities and has determined that the facilities can be licensed in accordance with its regulations. To the extent that Mr. Miska believes that no risk from nuclear power is acceptable, Congress has spoken otherwise: The NRC has been directed by Congress in the AEA to establish regulations that allow for the licensing of nuclear power plants and provide reasonable assurance of the

protection of the public health and safety and common defense and security.

Finally, the NRC acknowledges that a reduction in nuclear power capacity could be offset by increased use of wind or solar power (although the amount to which the base-load power provided by nuclear power could be offset by solar and wind power is still uncertain). These matters, however, are matters of national energy policy and are not within the NRC's jurisdiction to consider. The NRC does not promote the use of nuclear power or any other means of producing power. Rather, NRC is charged with making sure that as long as national energy policy includes nuclear power, nuclear power plants are operated safely and securely and in compliance with regulatory requirements.

Comment 8

The Nuclear Energy Institute (NEI) submitted comments opposing the petition on several grounds. NEI first argued that any NRC consideration of the impacts of recent developments in the Yucca Mountain project should be considered within the then ongoing Waste Confidence proceeding. Second, NEI argued that as rulemakings consider issues generically, it is inappropriate to consider Mr. Kane's request for cessation of new plant licensing and the phase-out of currently operating plants.

NRC Response

The NRC agrees that the petition should be denied. As noted previously, the Waste Confidence Decision and Rule do not depend upon the availability of the repository at Yucca Mountain. Although the NRC agrees with NEI that separate consideration of an ongoing rulemaking on individual dockets is inappropriate, *Entergy Nuclear Operations* (Indian Point, Units 2 and 3), CLI–10–19, 72 NRC __ (July 8, 2010) (slip op. at 2–3) ("Under longstanding NRC policy, licensing boards should not accept in individual license proceedings contentions which are (or are about to become) the subject of general rulemaking by the Commission" (citation omitted)), Mr. Kane has not requested that his petition be considered in individual dockets, but has instead requested generic relief.

Thus, the NRC does not agree with NEI's suggestion that the petition should be denied because it seeks resolution of a generic issue on individual dockets.

Comment 9

The DOE submitted comments opposing the petition. The Department argued that the issues raised in the petition fall squarely within the Commission's recently concluded Waste Confidence rulemaking, and that the Waste Confidence rulemaking is not dependent upon the availability of Yucca Mountain for waste disposal. The DOE also noted that dry storage technology provides DOE with sufficient time to meet its obligations for a permanent waste disposal under the Nuclear Waste Policy Act.

NRC Response

The NRC agrees that the petition should be denied. As noted previously, the Waste Confidence Decision and Rule do not depend upon the availability of the repository at Yucca Mountain. Further, both the Waste Confidence Decision and Rule assume that Yucca Mountain will not be built. In its recent Waste Confidence Decision and Rule, the Commission affirmed its position on the temporary storage of SNF pending the construction of a repository. Whether DOE has met its obligations under the Nuclear Waste Policy Act is outside the scope of the Commission's Waste Confidence Decision and Rule.

Comment 10

J. Russell Dyer submitted a comment supporting the petition. He raised two concerns: intergenerational equity and the effect of social and political stability on the long-term storage and eventual disposal of SNF and HLW. Mr. Dyer argued that without a "considered national policy to replace the Nuclear Waste Policy Act" the United States should cease generating the hazardous burden of SNF and HLW. Mr. Dyer urged the NRC to suspend existing reactor licenses, curtail license extension actions, and refrain from granting new construction or operating licenses.

NRC Response

Mr. Dyer is correct that intergenerational equity was considered in the Nuclear Waste Policy Act and the Commission's Waste Confidence Decision. (42 U.S.C. 10131 (2006) and 75 FR 81048). But intergenerational equity does not dictate that a disposal facility must be available when a nuclear power plant is licensed; as noted in the Waste Confidence Decision: "The Commission's approach in Findings 2 and 4 acknowledges the need for permanent disposal, and for the generations that benefit from nuclear energy to bear the responsibility for providing an ultimate disposal for the resulting waste." (75 FR 81048). Further, this concern was evaluated by the Court of Appeals for the Second Circuit in *NRDC* v. *NRC.* In that case, the Court held that the AEA did not require the NRC to make a finding that safe permanent disposal was available when a license is issued. (*NRDC* v. *NRC,* 582 F.2d 166, 175 (2d Cir. 1978)). Consistent with that decision, in the Waste Confidence Decision and Rule, the NRC found reasonable assurance of safe storage of SNF for at least 60 years beyond the licensed life for operation of any reactor and that repository capacity will be available when necessary. (75 FR 81067).

The Federal government continues to evaluate options for the ultimate disposal of SNF and HLW. Although the Waste Confidence Decision does not consider the indefinite storage of SNF, disposal in a geologic repository is still the ultimate goal (75 FR 81041). The Nuclear Waste Policy Act is still the law: The Act continues to mandate disposal in a repository, the collection of funds for the Nuclear Waste Fund, and that the Federal Government "has the responsibility to provide for the permanent disposal of" HLW and SNF. 42 U.S.C. 1013 (2006). Concurrent with its recent motion to withdraw the Yucca Mountain application, the Department of Energy created the Blue Ribbon Commission on America's Nuclear Future to evaluate, assess, and advise on possible alternatives for storage, management, and ultimate disposal of SNF and HLW (part of this evaluation will explore the need for additional or amended legislation). (*http://brc.gov/pdfFiles/BRC_Charter.pdf*). These measures demonstrate the Federal government's continued commitment to addressing the nuclear waste disposal problem in this generation.

Mr. Dyer's comment links political and social stability with the ability to determine and implement a final disposal solution. As explained in the Waste Confidence Decision and Rule, the Commission has confidence that the political and institutional hurdles to determining a path forward can be overcome. (75 FR 81049). This conclusion is supported by a review of international progress on licensing a deep geologic repository. (*See* 75 FR at 81065–81066). In addition to benefiting from international experience, any new repository program would benefit from the lessons learned through the preparation and review of the Yucca Mountain license application. Although the Commission recognizes the need for broad public support before a successful repository program can be achieved (75 FR 81066), the ongoing efforts of the NRC and other Federal entities provide reasonable assurance that this generation will deal with the ultimate disposal of SNF and HLW.

Determination of Petition

For reasons discussed above, the NRC denies PRM–51–13.

Dated at Rockville, Maryland, this 16th day of February 2011.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Acting Executive Director for Operations.

[FR Doc. 2011–4347 Filed 2–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

[NRC–2011–0043]

Public Workshop to Discuss Low-Level Radioactive Waste Management

AGENCY: Nuclear Regulatory Commission.

ACTION: Public Workshop and Request for Comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), in coordination with the U.S. Department of Energy (DOE), plans to conduct a workshop to discuss possible approaches to revising the regulatory framework for the management of commercial low-level radioactive waste (LLW). The purpose of this workshop is to gather information from a broad spectrum of stakeholders concerning the NRC's proposed options for a comprehensive revision to NRC's and DOE's waste regulations and to discuss possible options.

DATES: The workshop will be on March 4, 2011, in Phoenix, Arizona. To participate online, see Section II of the **SUPPLEMENTARY INFORMATION** section of this notice. Comments on the issues and questions presented in Section III of the **SUPPLEMENTARY INFORMATION** section of this notice are due March 30, 2011.

ADDRESSES: The public workshop will be held on March 4, 2011, from 8:30 a.m. to 5:30 p.m. at the Hyatt Regency Phoenix Hotel, 122 North Second Street, Phoenix, AZ 85004. The NRC will accept public comments at the public workshop. You may also submit comments by any one of the following methods. Please include Docket ID NRC–2011–0043 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0043. Address questions about NRC dockets to Ms. Carol Gallagher, telephone: 301–492–3668, e-mail: *Carol.Gallagher@nrc.gov.*

Mail comments to: Ms. Cindy Bladey, Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0043.

FOR FURTHER INFORMATION CONTACT: Michael P. Lee, Ph.D., Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6887; e-mail: *Mike.Lee@nrc.gov;* Donald B. Lowman, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5452; e-mail: *Donald.Lowman@nrc.gov;* or Antoinette Walker-Smith, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6390; e-mail: *Antoinette.Walker-Smith@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's licensing requirements for the disposal of LLW in near-surface [approximately the uppermost 30 meters (100 feet)] facilities reside in part 61. These regulations were published in the **Federal Register** on December 27, 1982 (47 FR 57446). The rule applies to any near-surface LLW disposal technology, including shallow-land burial, engineered land disposal methods such as below-ground vaults, earth-mounded concrete bunkers, and augered holes. The regulations emphasize an integrated systems approach to the disposal of commercial LLW, including site selection, disposal facility design and operation, minimum waste form requirements, and disposal facility closure. To lessen the burden on society over the long periods of time contemplated for the control of the radioactive material, and thus lessen reliance on institutional controls, part 61 emphasizes passive rather than active systems to limit and retard releases to the environment.

Development of the part 61 regulation in the early 1980s was based on several assumptions as to the types of wastes likely to go into a commercial LLW disposal facility. To better understand what the likely inventory of wastes available for disposal might be, the NRC conducted a survey of existing LLW generators. The survey, documented in Chapter 3 of NUREG–0782—the Draft part 61 Environmental Impact Statement (DEIS)—revealed that there were about 36 distinct commercial waste streams consisting of about 24 radionuclides of potential regulatory interest. The specific waste streams in question were representative of the types of commercial LLW being generated at the time. Waste streams associated with DOE's nuclear defense complex were not considered as part of the survey, since disposal of those wastes, at that time, was to be conducted at the DOE-operated sites. Over the last several years there have been a number of developments that have called into question some of the key assumptions

made in connection with the earlier part 61 DEIS, including:

• The emergence of potential LLW streams that were not considered in the original part 61 rulemaking, including large quantities of depleted uranium, and possibly incidental wastes associated with the commercial reprocessing of spent nuclear fuel; and

• DOE's increasing use of commercial facilities for the disposal of defense-related LLW streams; and

• Extensive international operational experience in the management of LLW and intermediate-level radioactive wastes that did not exist at the time part 61 was promulgated.

The developments described above will need to be considered if the staff undertakes a revision of part 61. Waste from the Nation's defense programs has been managed by DOE and is not subject to part 61. Instead, DOE has used DOE Order 435.1 to specify the disposal requirements for this waste. The current version of this Order has been in place for about 11 years and applies to management of radioactive waste within the DOE complex. Like part 61, Order 435.1 places a heavy emphasis on performance assessment as part of its radioactive waste management decision-making. DOE recently started a comprehensive revision of Order 435.1, which it plans to complete sometime in 2011. The staff plans to consider any modifications to Order 435.1 as part of a comprehensive revision to part 61.

In SRM–M100617B (ADAMS ML1018203015), the Commission directed the staff to outline its approach to initiate activities in connection with a possible revision to part 61 that is risk-informed, performance-based. However, before the start of any rulemaking process, the staff recommended that it engage stakeholders and solicit their views on whether there should be amendments to the current part 61 and if so, what the nature of those amendments should be. This approach is consistent with NRC's openness policy and with the type of public outreach used by the staff to develop part 61.

II. NRC/DOE Joint Public Workshop

The purpose of this workshop is to gather information from a broad spectrum of stakeholders concerning the NRC's proposed options for a comprehensive revision to NRC's and DOE's waste regulations. They include: (1) Risk-inform the current part 61 waste classification framework, (2) comprehensive revision to part 61, (3) site-specific waste acceptance criteria, (4) international alignment, and (5) supersede direction given in Staff Requirements Memorandum (SRM)–08–0147. This workshop will be conducted jointly with DOE who is also considering revisions to its Management Directive DOE Order 435.1 (*Radioactive Waste Management*).

The joint public workshop will be organized in two sessions (one for each agency), followed by a joint "Panel Discussion" Session. Session I will address DOE Order 435.1. Session I will also include an opportunity for stakeholder feedback and comments. Session II will address the NRC staff's proposed options for any potential rulemaking actions with respect to revision of 10 CFR part 61 (*Licensing Requirements for Land Disposal of Radioactive Waste*) as discussed in the NRC Commission Paper SECY–10–0165. This SECY paper is available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2010/*. Session II will also include background presentations on SECY–10–0165 by NRC staff. Following Session II, there will be a joint DOE/NRC Panel Discussion to explain the agencies' respective positions, future plans, and specific views regarding the LLW management framework. The panel will also address public and stakeholder suggestions and comments.

The public workshop will be held on March 4, 2011, from 8:30 a.m. to 5:30 p.m. at the Hyatt Regency Phoenix Hotel, 122 North Second Street, Phoenix, Arizona 85004. Pre-registration for this meeting is not necessary. Members of the public choosing to participate in this meeting remotely can do so in one of two ways—online, via Webex, or via a telephone (audio) connection. Instructions for remote participation in this meeting are described below.

To join the online meeting (including mobile devices)

1. Go to *https://pec.webex.com/pec/j.php?ED=7975058&UID=32785548&PW=NNzA2ZGNlOGYx&RT=MiM1.*
2. If requested, enter your name and e-mail address.
3. If a password is required, enter the meeting password: Energy
4. Click "Join".

To view in other time zones or languages, please click the link: *https://pec.webex.com/pec/j.php?ED=7975058&UID=32785548&PW=NNzA2ZGNlOGYx&ORT=MiM1.*

To join the audio conference only

To receive a call back, provide your phone number when you join the meeting, or call the number below and enter the access code.

Call-in toll-free number (U.S./Canada): 1–877–669–3239 .

Call-in toll number (U.S./Canada): +1–408–600–3600 Toll-free dialing restrictions: *http://www.webex.com/pdf/tollfree_restrictions.pdf;* Access code: 858 991 753

The agenda for the public meeting will be noticed no fewer than ten (10) days prior to the meeting on the NRC's electronic public workshop schedule at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

III. Questions Related to 10 CFR Part 61, "Low-Level Radioactive Waste Management"

NRC staff is seeking stakeholder input to the following three questions that will be discussed at the public workshop:

(1) Should the staff revise the existing 10 CFR part 61?

(2) What recommendations do you have for specific changes to the current rule?

(3) What are your suggestions for possible new approaches to commercial LLW management?

NRC plans to consider stakeholder views in the development of a revised draft of part 61. The staff expects to issue a Commission Paper summarizing stakeholder views along with a recommendation for any future part 61 rulemaking in calendar year 2012. Written comments may be sent to the address listed in the **ADDRESSES** section. Questions about participation in the public workshops should be directed to the points of contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated at Rockville, Maryland, this 22nd day of February 2011.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–4404 Filed 2–25–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket No. RM11–6–000]

Annual Charges for Use of Government Lands

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry (NOI).

SUMMARY: The Federal Energy Regulatory Commission (Commission) is inviting comments on its procedures with respect to the assessment of annual charges for the use of government lands. This Notice of Inquiry will assist the Commission in identifying options to consider in determining the methodology to be used to calculate rental rates for use of government lands under Part 11 of the Commission's regulations.

DATES: Comments on this NOI are due on April 29, 2011.

ADDRESSES: You may submit comments on the Notice of Inquiry, identified by Docket No. RM11–6–000, by one of the following methods:

- *Electronic Submission:* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format, and not in a scanned format, at *http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. These requirements can be found on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Kimberly Ognisty, (Legal Information), Office of General Counsel—Energy Projects, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8565.

Doug Foster, (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6118.

SUPPLEMENTARY INFORMATION:

Notice of Inquiry

Issued February 17, 2011

1. The Federal Energy Regulatory Commission is issuing this Notice of Inquiry to seek comments on its procedures with respect to the assessment of annual charges for the use of government lands by hydropower projects. In particular, the Commission is interested in identifying administratively practical methods for assessing reasonable annual charges that compensate the United States for the use of its lands.

I. Background

2. Section 10(e)(1) of the Federal Power Act (FPA) [1] requires Commission hydropower licensees using Federal lands to:

> pay to the United States reasonable annual charges in an amount to be fixed by the Commission * * * for recompensing [the United States] for the use, occupancy, and enjoyment of its lands or other property * * * and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require * * *

In other words, where hydropower licensees use and occupy Federal lands for project purposes, they must compensate the United States through payment of an annual fee, to be established by the Commission.[2]

3. The Commission has employed various methodologies to determine the charges. The touchstone has been to find an administratively practical methodology which results in reasonably accurate land valuations.

4. Beginning in 1938, annual charges for use of government land were based on project-by-project appraisals.[3] That proved uneconomical because the cost of conducting individual appraisals was in excess of the value of the land involved.[4] In 1942, the Commission's predecessor, the Federal Power Commission (FPC), developed a national average value of $50 per acre, to which it applied a four percent rate of return to derive an annual land use charge of $2.00 per acre.[5] The FPC had determined that a national average was superior to regional or State land values because use of the national average would simplify the administrative task of Commission staff and reduce the costs associated with yearly land use charge determinations.[6] The FPC recognized that regional or State averages had the advantage of greater localization, but concluded that any speculative improvement in land value accuracy would not be significant enough to outweigh the obvious administrative economies accruing when a single nationwide figure is used as the basis for annual charges.[7]

5. In 1962, the FPC increased the national average land value to $60 per acre, and in 1976 to $150 per acre. In 1976, the FPC also adopted a fluctuating interest rate to ensure that the rate of return would remain current.[8]

6. In 1985, the Inspector General of the Department of Energy concluded that the Commission's existing methodology resulted in an under-collection of over $15 million per year because it used outdated land values. The Inspector General also found that the wide variation in land values made the use of a zone index preferable to a national average. The Inspector General recommended that the Commission: (1) Base land use charges on the current fair market value of the land being used; (2) use current long-term interest rates in its calculations; and (3) replace the national average land value with State-by-State averages.[9]

7. In response, the Commission instituted a rulemaking for several purposes, including to impose Federal land use fees that better approximated the fair market value of the use of those lands. In the Notice of Proposed Rulemaking, the Commission noted that it had found no existing index of land values that accurately reflected current economic conditions and conformed precisely to the context of land used for hydropower projects.[10] The Commission stated that it was considering several proposals for assessing land use charges, including: (1) Using, with modifications, the "Agricultural Land Values and Market Outlook and Situation Report,"

[1] 16 U.S.C. 803(e)(1) (2006). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of the administration of Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this Notice of Inquiry.

[2] Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2006), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the treasury of the United States, 50 percent is paid into the Federal reclamation fund, and 37.5 percent is paid into the treasuries of the States in which particular projects are located. No part of the fees is used to fund the Commission's operations.

[3] *See* Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges, Order No. 469, FERC Stats. & Regs. ¶ 30,741, at 30,584 (1987).

[4] *Id.*

[5] *Id.*

[6] Order Prescribing Amendment to Section 11.21 of the Regulations Under the Federal Power Act, Order No. 560, 56 F.P.C. 3860 (1976).

[7] *Id.*

[8] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,584. This rate was based on a fluctuating rate used by the United States Water Resources Council, based primarily upon the average yield of long-term United States interest-bearing securities.

[9] *See* Assessment of Charges under the Hydroelectric Program, DOE/IG Report No. 0219 (September 3, 1986); *see also* More Efforts Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED–87–12 (November 1986).

[10] Billing Procedure Revisions—Annual Charges Methodology for Assessing Federal Land Use Charges, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,423, at 33,281 (1985).

published by the Department of Agriculture, which provided State-by-State average farm land and building values; (2) conducting individual appraisals; or (3) using fees based on a licensed project's gross income or on its power generation.[11] In a subsequent notice requesting supplemental comments, the Commission posited another alternative that had recently become available: basing land use fees on a rental schedule for linear rights-of-way being developed jointly by the U.S. Department of Agriculture's Forest Service and the U.S. Department of Interior's Bureau of Land Management (BLM).[12] The Commission explained that, although the rental schedule concerned linear rights-of-way, it might be more representative of the value of land used for hydropower projects than valuation of farm lands or any other then currently-published information.[13]

8. In its final rule, the Commission explained that its existing methodology had resulted in under-collection of land use charges and was no longer reasonable because it used outdated land values, that the wide variation in land values across the country made use of a zone index preferable to a national average, and that its previous decision not to use such an index because of the burden on the Commission to determine the value of Forest Service lands was no longer an issue because the Forest Service and BLM had begun promulgating an index setting forth those values.[14] The Commission agreed with the majority of commenters that the BLM–Forest Service index more accurately reflected typical hydropower project lands, and so decided to use that index rather than the farm values index.[15]

9. The Commission explained that the BLM–Forest Service methodology was based on a survey of the various types of lands that the Forest Service has allowed to be occupied by linear rights-of-way. The schedule was divided into regional zones, and provided per acre rental fees listed by State and county.[16] The Commission decided to continue its past practice of doubling the linear right-of-way fee in order to establish the annual fees for the use of Federal lands for project works other than transmission lines (*e.g.,* dams, powerhouse, and reservoirs) because lands used for transmission line rights-of-way would remain available for multiple uses, while other Federal lands occupied by hydropower project works would not.[17]

10. The Commission found no merit to claims that charging fair market value for Federal lands is prohibited by the FPA:

> All increases in charges will result in some impact on consumers. The statutory provision bars the Commission from assessing unreasonable charges that would be passed along to consumers. Reasonable annual charges are those that are proportionate to the value of the benefit conferred. Therefore, a fair market approach is consistent with the dictates of the Act. Furthermore, as land values have not been adjusted in over ten years, an adjustment upwards is warranted and overdue.[18]

The Commission stated that "the Forest Service index is the best approximation of reasonable land charges" and explained that "the Forest Service index will be adopted and published each year by the Commission."[19]

11. The Commission rejected the proposal to use the agricultural lands value index published by the U.S. Department of Agriculture, which used a State-by-State average value per acre of farm land and buildings. The Commission concluded that the agricultural index would require such major adjustments that it would not be an efficient measure of land value for hydropower projects.[20] The Commission also rejected using a fee based on the percentage of gross sales or a rate per kilowatt hour. The Commission concluded that a percentage of gross sales fee or flat rate is not a reasonable method because it would charge a royalty as though the Federal land being used was producing power, which overlooks the fact that power output is the result of many factors (*e.g.,* water rights, head, project structures), and not just the acreage of the Federal land involved.[21] Finally, the Commission rejected the proposal to use individual project appraisals, concluding that the FPC had abandoned the appraisal method in 1942, and again after reconsideration in 1976, because the cost of individual project appraisals was excessive compared to the value of the Federal land at issue. Thus, the Commission concluded that individual appraisals would be too costly and result in time-consuming litigation.[22]

12. Based on these findings, the Commission promulgated a regulation stating, *inter alia,* that annual charges for the use of government lands would be set on the basis of the schedule of rental fees for linear rights-of-way (the BLM–Forest Service schedule); that annual charges for government lands occupied by project transmission lines would be based directly on the schedule, while charges for lands used for other project purposes would be twice the charges set forth in the schedule; and that the Commission, by its designee the Executive Director, would update its fees schedule to reflect changes in land values established by the Forest Service.[23]

13. From 1987 until 2008, BLM and the Forest Service did not change the 1987 linear right-of-way schedule, other than to make an adjustment to the fees each year to account for inflation. Likewise, the only change in the Commission's implementation of its annual charges during this period was an annual fee update schedule to reflect the inflation adjustment.[24] In 2005, Congress passed the Energy Policy Act of 2005 that required BLM "to update [the schedule] to revise the per acre rental fee zone value schedule by State, county, and type of linear right-of-way use to reflect current values of land in each zone."[25] Congress further ordered that "the Secretary of Agriculture shall make the same revision for linear rights-of-way * * * on National Forest System land."

14. On April 27, 2006, BLM issued an advance notice of proposed rulemaking proposing to update the fee schedule.[26] BLM stated that it was considering using existing published information or statistical data, such as information published by the National Agricultural Statistic Service (NASS), for updating the schedule. On December 11, 2007, BLM issued a proposed rule updating the rental fee schedule,[27] and on October 31, 2008, it issued a final rule.[28] The rule based the updated fee on the NASS information, as BLM had proposed. BLM noted that the four

[11] *Id.*

[12] 52 FR 82 (Jan. 2, 1987).

[13] *Id.*

[14] Order No. 469, FERC Stats. & Regs. at 30,584.

[15] *Id.* at 30,589.

[16] *Id.* at 30,588.

[17] *See id.* at 30,588–89.

[18] *Id.* (footnotes omitted). The Commission also rejected arguments that it should intentionally set low land charges based on the public benefits provided by hydropower projects.

[19] *Id.* at 30,591.

[20] *Id.* at 30,589.

[21] *Id.* at 30,589–90.

[22] *Id.* at 30,590.

[23] *See* 18 CFR 11.2(b) (2010).

[24] *See, e.g.,* Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands, 73 FR 3626 (January 22, 2008), FERC Stats. & Regs. ¶ 31,262 (2008)

[25] 42 U.S.C. 15925 (2006).

[26] Update of Linear Right-of-Way Rental Schedule, 71 FR 24,836.

[27] Update of Linear Right-of-Way Rent Schedule, 72 FR 70,376.

[28] Update of Linear Right-of-Way Rent Schedule, 73 FR 65,040.

commenters who had addressed the issue had supported use of the NASS data. The Forest Service subsequently adopted the BLM revisions.[29]

15. In January 2009, the Commission sent letters to all of its licensees, explaining that the Forest Service had revised its fee schedule in response to direction from Congress and that consequently "for many projects, the [fiscal year] 2009 Federal land use charges will increase substantially." The Commission asked licensees to confirm by county the Federal acres that the Commission believed to be occupied by each project.[30]

16. On February 17, 2009, the Commission issued notice of the Fee Update Schedule and based the schedule, as in previous years, on the BLM's and Forest Service's land valuations (February 17 Notice).[31] Because of the BLM–Forest Service revisions, this resulted, in some cases, in significantly higher fees being assessed.[32] In calculating the 2009 fees, the Commission used the same methodology that it has used for the past 21 years: it took the land values published by Forest Service and BLM, used the information in its files showing Federal acreage occupied by individual projects, and applied the values for the counties in which individual projects were located, doubling the values for acreage occupied by non-transmission line portions of hydropower projects.

17. On March 6, 2009, the Federal Lands Group, a group of licensees composed of both municipal and private entities, filed a request for rehearing of the February 17 Notice. The group alleged that the February 17 Notice amounted to a rulemaking, improperly issued without notice and an opportunity for comment, and that the Commission had improperly delegated its authority to set annual charges to BLM and the Forest Service. The group asked the Commission to vacate the February 17 Notice, rescind annual charge bills that had been sent out in accordance with it, and reissue bills calculated under the prior fees schedule.

18. On October 30, 2009, the Commission denied rehearing.[33] On December 18, 2009, the Federal Lands Group filed a petition for review with the United States Court of Appeals for the District of Columbia Circuit. On January 4, 2011, the Court granted the petition for review and vacated the 2009 Update.[34] The Court stated that the Commission is required by the Administrative Procedure Act to seek notice and comment on the methodology used to calculate annual charges because the Commission's fee schedule is based on the Forest Service's land value index, and the Forest Service has made changes to the methodology underlying its index. We begin that process here.

II. Subject of the Notice of Inquiry

19. As recounted above, the Commission has employed various methodologies over the course of its history to determine annual charges for the use of government lands by hydropower projects. The touchstone has been to find an administratively-practical methodology, which results in reasonably accurate land valuations. In seeking this goal, the methodology has been modified on occasion in response to concerns such as the cost of administering the methodology (*e.g.,* rejecting individual appraisals), the administrative burden on the Commission (*e.g.,* rejecting creation of our own index), and the accurate collection of fair market value (*e.g.,* implementing updates in response to the contention that Commission had been under-collecting). At times, however, a previously-rejected approach has been revisited and adopted (*e.g.,* Forest Service-BLM index adopted with adjustments because Commission would not be subject to administrative burden of creating its own index). The Commission now seeks suggestions for creating an administratively-practical methodology for assessing annual charges for the use of government lands that will result in reasonably accurate land valuations. The Commission specifically seeks comment on existing indices that could be used as the basis for establishing annual land use charges, and whether particular indices are better suited for that purpose than others. We outline below the major objectives in considering a new annual charges methodology, and request that commenters address how any methodology they suggest would be consistent with each of those objectives.

A. Uniform Applicability

20. Any proposed methodology should be uniformly applicable to all hydropower licensees. This means that the Executive Director should be able to take the information in the Commission's files showing Federal acreage occupied by individual projects, apply the adopted methodology, and create an annual charge for the use of government lands for each licensed project. This has previously been possible, for instance, from 1987 to 2008, with the use of an existing index created by the Forest Service and BLM, modified as necessary, and updated automatically by the Forest Service for inflation.

B. Cost of Administering Collection of Annual Charges

21. The administration of any proposed methodology must not impose exorbitant costs on the Commission. Collection of annual charges and application of the ultimate methodology should be an annual, routine ministerial process that requires reasonable, but not overly burdensome, staff effort.

C. Methodology Not Subject to Review on an Individual Basis

22. Any proposed methodology, once adopted, should not be subject to review on an individual case-by-case basis. Licensees will have the opportunity to challenge computational errors by the Executive Director in calculating the annual charge or the relevant county land acreage, but case-by-case challenges to the methodology would add significantly to the administrative cost and burden of collecting annual charges.

D. Fair Market Value

23. At times in the Commission's history, it has been determined that the Commission had not been collecting fair market value for the use of government lands, which resulted in a substantial under-collection.[35] To ensure that the Commission recovers "reasonable annual charges," any proposed methodology must reflect reasonably accurate land valuations.

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[29] *See Fee Schedule for Linear Rights-of-Way Authorized on National Forest System Lands,* 73 FR 66,591 (November 10, 2008). The Forest Service noted that it had given notice, in the preambles to BLM's proposed and final rules, that it would adopt BLM's revised fee schedule.

[30] *See, e.g.,* letter to Portland General Electric Co. in Project No. 2030 (January 6, 2009).

[31] Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands, 74 FR 8184 (February 24, 2009) FERC Stats. & Regs. ¶ 31,288 (2009).

[32] Other licensees, typically in the eastern part of the country, had their charges reduced.

[33] Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Changes for the Use of Government Lands, 129 FERC ¶ 61,095 (2009).

[34] *City of Idaho Falls, Idaho* v. *FERC,* No. 09–1120, 2011 U.S. App. LEXIS 13 (DC Cir. Jan. 4, 2011).

[35] *See* Assessment of Charges under the Hydroelectric Program, DOE/IG Report No. 0219 (September 3, 1986); *see also* More Efforts Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED–87–12 (November 1986).

E. Avoid Increasing Price to Consumers of Power

24. In fixing annual charges, we must seek to avoid increasing the price to consumers of power by such charges. Therefore, any proposed methodology should provide reasonable, but not excessive, compensation to the United States for the use of its lands.

III. Comment Procedures

25. The Commission invites interested persons to submit comments and other information on the matters, issues, and specific questions identified in this notice. Comments are due April 29, 2011. Comments must refer to Docket No. RM11–6–000, and must include the commenter's name, the organization it represents, if applicable, and its address.

26. To facilitate the Commission's review of the comments, commenters are requested to provide an executive summary of their position. Commenters are requested to identify each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commenters wish to raise should be identified separately. The commenters should double-space their comments.

27. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

28. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC, 20426. The current requirements are specified on the Commission's Web site, *see, e.g.,* the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

29. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters are not required to serve copies of their comments on other commenters.

IV. Document Availability

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

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

32. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4268 Filed 2–25–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2010–0416; FRL–9271–8]

Approval and Promulgation of Determination of Attainment for the 1997 8-Hour Ozone Standard: States of Missouri and Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the St. Louis (MO-IL) metropolitan nonattainment area has attained the 1997 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. The St. Louis metropolitan ozone nonattainment area includes the counties of Franklin, Jefferson, St. Charles, and St. Louis as well as St. Louis City in Missouri; and the counties of Madison, Monroe, St. Clair, and Jersey in Illinois. This proposed determination is based on three years of complete, quality assured ambient air quality monitoring data for Missouri and Illinois for the 2008 through 2010 ozone seasons showing attainment of the NAAQS at all ozone monitoring sites in the nonattainment area. If EPA finalizes its proposed determination, it will suspend the obligation to submit certain ozone attainment demonstration requirements, along with other requirements related to the attainment of the 1997 8-hour ozone standard.

DATES: Comments must be received on or before March 30, 2011.

ADDRESSES: Submit your comments regarding the Missouri portion of the St. Louis (MO–IL) metropolitan area, identified by Docket ID No. EPA–R07–OAR–2010–0416, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: kemp.lachala@epa.gov.*

3. *Mail or Hand Delivery or Courier:* Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Submit your comments regarding the Illinois portion of the St. Louis (MO–IL) metropolitan area, identified by Docket ID No. EPA–R07–OAR–2010–0416, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Mail or Hand Delivery or Courier:* John M. Mooney, Chief, Attainment Planning and Maintenance Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2010–0146. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket. All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: In Region 7 contact Lachala Kemp, Air Planning and Development Branch, 901 N. 5th Street, Kansas City, Kansas 66101 at 913 551–7214, or by e-mail at *kemp.lachala@epa.gov.* In Region 5 contact Edward Doty, Attaining Planning and Maintenance Section, Air Programs Branch (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 866–6057 or by e-mail at *doty.edward@epa.gov.*

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

Table of Contents

I. What should I consider as I prepare my comments to EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternative and substitute language for your requested change.
4. Describe any assumptions and provide any technical information and/or data you used.
5. If you estimate potential cost or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified in the proposed rule.

II. What action is EPA proposing to take?

EPA is proposing to determine that the St. Louis (MO–IL) metropolitan 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS. EPA received a request from the Missouri Department of Natural Resources to determine that the St. Louis metropolitan nonattainment area has attained the 1997 8-hour ozone standard of 0.08 parts per million (ppm). This request is based upon the most recent three years of complete, quality assured ambient air monitoring data for Missouri and Illinois showing that the area has attained the NAAQS during the 2008–2010 monitoring period.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA again addressed this 2008 revised standard and proposed to set the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA is working to complete reconsideration of the standard and thereafter will proceed with designations. Today's proposed rulemaking relates only to a determination of attainment for the 1997 8-hour ozone standard and is not affected by the ongoing process of reconsidering the revised 2010 standard.

The monitors and design values are displayed in Table 1. The table summarizes the annual fourth-high daily maximum 8-hour ozone concentrations and their 3-year (2008–2010) averages for all monitors in the St. Louis (MO–IL) metropolitan nonattainment area. These data reflect peak ozone concentrations quality assured and reported by the States of Illinois and Missouri.

TABLE 1—ANNUAL FOURTH-HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGES IN PPM FOR THE ST. LOUIS (MO-IL) AREA

State	County	Monitor	2008 4th high (ppm)	2009 4th high (ppm)	2010 4th high (ppm)	2008–2010 average (ppm)
Illinois	Jersey	Jerseyville, 17–083–1001	0.069	0.068	0.072	0.069
	Madison	Alton, 17–119–0008	0.068	0.067	0.080	0.071
		Maryville, 17–119–1009	0.070	0.074	0.074	0.072
		Wood River, 17–119–3007	0.067	0.066	0.070	0.067
	St. Clair	East St. Louis, 17–163–0010	0.064	0.069	0.072	0.068
Missouri	Jefferson	Arnold West, 29–099–00019	0.70	0.070	0.077	0.072
	St. Charles	Orchard Farm, 29–183–1004	0.072	0.073	0.077	0.074
		West Alton, 29–183–1002	0.076	0.071	0.084	0.077
	St. Louis	Maryland Heights, 29–189–0014	0.069	0.070	0.076	0.071
		Pacific, 29–189–0005	0.064	0.064	0.069	0.065
	St. Louis City	Blair Street, 29–510–0085	0.073	0.065	0.071	0.069

Review of the 2008–2010 ozone monitoring data in the nonattainment area shows that all sites were attaining the 1997 8-hour ozone NAAQS during this period. Therefore, based on the most recent three years of complete, quality assured ozone monitoring data, EPA is proposing to determine that the 1997 8-hour ozone standard has been attained in the St. Louis (MO-IL) metropolitan ozone nonattainment area.

III. What is the effect of this action?

EPA is proposing to determine that the St. Louis metropolitan 8-hour ozone nonattainment area consisting of both the Missouri and Illinois portions of the area has attained the 1997 8-hour ozone standard. As provided in 40 CFR 51.918, if EPA finalizes this determination, certain attainment demonstration requirements and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIP requirements related to attainment of the 8-hour ozone NAAQS shall be suspended as to the St. Louis nonattainment area. Under 40 CFR 51.918, a final determination that the area has met the 1997 8-hour ozone standard suspends the State's obligation to submit requirements related to attainment, for so long as the area continues to attain the standard. This action does not constitute a redesignation to attainment under CAA section 107(d)(3), because Missouri and Illinois do not have approved maintenance plans as required under section 175A of the CAA, nor has EPA made a determination that the area has met the other requirements for redesignation. The ozone classification and designation status of the area remains moderate nonattainment for the 1997 8-hour ozone NAAQS until such time as a redesignation request and maintenance plan are submitted to EPA and EPA determines that it meets the CAA requirements for redesignation to attainment.

If EPA subsequently determines, after notice-and-comment rulemaking in the **Federal Register**, that the area has violated the 1997 8-hour ozone standard, the basis for the suspension of these requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

IV. EPA's proposed action?

EPA is proposing to determine that the St. Louis (MO-IL) metropolitan 1997 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard based on three years of complete, quality assured ambient air quality monitoring data for Missouri and Illinois for the 2008–2010 ozone seasons. As provided in 40 CFR 51.918, if EPA finalizes this determination, the requirements for Missouri and Illinois to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, and contingency measures under section 172(c)(9), and any other planning SIP related to attainment of the 1997 8-hour ozone NAAQS for the St. Louis Metropolitan area would be suspended. This suspension of requirements would be effective as long as the area continues to attain the 1997 8-hour ozone standard. This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequent revisions to the standard.

V. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal Requirements. Accordingly, this proposed action does not impose additional requirements beyond those imposed by State law. Therefore, this proposed action:

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

In addition, this proposed 8-hour ozone clean NAAQS data determination for the St. Louis (MO–IL) metropolitan area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: February 10, 2011.

Karl Brooks,

Regional Administrator, Region 7.

Dated: February 16, 2011.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 2011–4382 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0995; FRL–9271–3]

Approval and Promulgation of Implementation Plans; State of Nevada; PM–10; Determinations Regarding Attainment for the Truckee Meadows Nonattainment Area and Applicability of Certain Clean Air Act Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make two separate and independent determinations regarding attainment for the Truckee Meadows PM–10 nonattainment area in Washoe County, Nevada (Truckee Meadows area). First, EPA is proposing to determine that, based on complete and quality-assured air monitoring data for 1999–2001, the Truckee Meadows area did not attain the 24-hour National Ambient Air Quality Standard ("NAAQS") for

particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("PM–10") by the applicable attainment date of December 31, 2001. Second, EPA is proposing to determine that the Truckee Meadows area is currently attaining the PM–10 NAAQS, based upon complete, quality-assured PM–10 air quality monitoring data during the years 2007–2009. Preliminary data through June 2010 contained in EPA's Air Quality System ("AQS") show that no exceedances of the 24-hour NAAQS have been recorded in the Truckee Meadows area. Because the Truckee Meadows area is currently attaining the PM–10 NAAQS, EPA is proposing to determine that the obligation to make submissions to meet certain Clean Air Act ("CAA" or "the Act") requirements related to attainment are not applicable for as long as the area continues to attain the PM–10 NAAQS.

DATES: Written comments must be received on or before March 30, 2011.

ADDRESSES: Submit your comments, identified by docket number EPA–R09–OAR–2010–0995, by one of the following methods:

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

2. *E-mail:* Karina O'Connor at *oconnor.karina@epa.gov.*

3. *Fax:* Karina O'Connor, Planning Office (AIR–2), at fax number (415) 947–3579.

4. *Mail or deliver:* Karina O'Connor, Air Planning Office, (AIR–2), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Hand or courier deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under EPA–R09–OAR–2010–0995. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports) and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Planning Office (AIR–2), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, telephone (775) 434–8176; fax (415) 947–3579; e-mail address *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA. This supplementary information is organized as follows:

Table of Contents

I. Background

A. The NAAQS for PM–10

Particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers ("PM–10") is the subject of this proposed action. The NAAQS are limits for certain ambient air pollutants set by EPA to protect public health and welfare. PM–10 is among the ambient air pollutants for which EPA has established a health-based standard.

On July 1, 1987 (52 FR 24634), EPA revised the particulate matter ("PM") NAAQS to replace Total Suspended Particulate ("TSP") with PM–10 as the PM indicator. The 24-hour primary PM–10 standard was set at 150 micrograms per cubic meter (μg/m^3) with no more than one expected exceedance per year. The annual primary PM–10 standard was set at 50 μg/m^3 as an annual arithmetic mean. The secondary PM–10 standards were identical to the primary standards.[1]

On October 17, 2006, EPA revised the primary PM–10 standards by revoking the annual standard of 50 μg/m^3 but retained the 24-hour standard of 150 μg/m^3. EPA also revoked the annual secondary PM–10 standard. The revised PM–10 NAAQS became effective on December 18, 2006. *See* 71 FR 61144 and 40 CFR 50.6. Thus, for PM–10, the level of both the primary and secondary 24-hour NAAQS[2] is 150 μg/m^3. 40 CFR 50.6(a).

B. Designation, Classification and Air Quality Planning for PM–10 in Truckee Meadows

The Truckee Meadows PM–10 nonattainment area[3] lies in the far southern part of Washoe County, which is located in the northwestern portion of Nevada and is bordered by the State of California to the west and the State of Oregon to the north. Within the State of Nevada, the counties of Humboldt, Pershing, Storey, Churchill, Lyon, and the city of Carson City border Washoe County to the east and south. Located at an average elevation of 4,500 feet above sea level, Truckee Meadows encompasses a land area of

[1] EPA sets two types of NAAQS: "primary" NAAQS requisite to protect public health with an adequate margin of safety, and "secondary" NAAQS requisite to protect public welfare, *e.g.,* protection against visibility impairment and damage to animals, crops, vegetation, and buildings. *See* CAA 109(b).

[2] We generally refer in this action to the primary and secondary 24-hour PM–10 NAAQS together in the singular (*i.e.,* as "standard").

[3] The Truckee Meadows PM–10 nonattainment area, also known as the "Reno planning area," is geographically identified in 40 CFR 81.329 as "hydrographic area 87."

approximately 200 square miles and is surrounded by mountain ranges, which can lead to persistent wintertime temperature inversions where a layer of cold air is trapped in the valley. Warmer air above the inversion acts as a lid, containing and concentrating air pollutants at ground level.

Much of Washoe County's urban population lives in the Truckee Meadows PM–10 nonattainment area. Anthropogenic activities, such as automobile use and residential wood combustion, are also concentrated here. In the last quarter of the twentieth century, Truckee Meadows experienced rapid growth in population, increasing from approximately 150,000 in 1980 to approximately 330,000 in 2009, an increase of 120 percent over that 29-year period. The two major cities in the area are Reno and Sparks.

EPA initially designated the Truckee Meadows area as nonattainment for the TSP NAAQS in 1978. *See* 43 FR 8962, 9012 (March 3, 1978). Following EPA's 1987 revisions to the PM NAAQS to replace TSP with PM–10 as the PM indicator, Truckee Meadows was designated and classified by operation of law under the CAA Amendments of 1990 as a moderate nonattainment area for the PM–10 NAAQS. *See* 56 FR 11101 (March 15, 1991); 56 FR 56694 (November 6, 1991). Effective February 7, 2001, EPA determined that the area had failed to attain both the annual and the 24-hour PM–10 NAAQS [4] by the CAA mandated attainment date for moderate nonattainment areas of December 31, 1994, and reclassified the area under CAA 188(b)(2) by operation of law as a serious nonattainment area for the PM–10 NAAQS. *See* 66 FR 1268 (January 8, 2001).

Air quality planning and monitoring in Truckee Meadows is the responsibility of the Washoe County District Board of Health ("District"), which administers air quality programs in Washoe County through the District Health Department's Air Quality Management Division ("WCAQMD").

C. Attainment Determinations

A determination of whether an area's air quality meets the PM–10 NAAQS is generally based upon the most recent three years of complete, quality-assured data gathered at established National Air Monitoring Stations ("NAMS") or State and Local Air Monitoring Stations ("SLAMS") in the nonattainment area and entered into the EPA Air Quality System ("AQS") database. Data from air monitors operated by State/local agencies in compliance with EPA monitoring requirements must be submitted to the EPA AQS database. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of areas. *See* 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix K.

The 24-hour PM–10 standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard (referred to herein as "exceedance" [5]), as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[6] *See* 40 CFR 50.6 and 40 CFR part 50, appendix K. Three consecutive years of complete air quality data are necessary to show attainment of the 24-hour standard for PM–10. *See* 40 CFR part 50, appendix K. A complete year of air quality data, as referred to in 40 CFR part 50, appendix K, includes all four calendar quarters with each quarter containing data from at least 75 percent of the scheduled sampling days. *Id.*

II. Proposed Determination of Failure To Attain the Standard by the Applicable Attainment Date

Sections 179(c)(1) and 188(b)(2) of the Act require for any PM–10 nonattainment area that EPA determine, within 6 months following the applicable attainment date, whether the area attained the standard by that date. Under section 188(c)(2) of the Act, the latest applicable attainment date for a serious PM–10 nonattainment area that was initially designated as nonattainment by operation of law under the CAA Amendments of 1990, such as the Truckee Meadows area, was December 31, 2001.

To determine whether the Truckee Meadows area attained the PM–10 standard by the applicable attainment date, we reviewed AQS monitoring data from the 1999–2001 period. The AQS database contains three consecutive years of complete, quality-assured and certified PM–10 data for the 1999–2001 period from the four monitors then operating in Truckee Meadows.[7] We have reviewed the monitoring data for this period and found that the Truckee Meadows area experienced two exceedances of the PM–10 standard in 1999 which resulted in an average expected exceedance rate of more than one during the 1999–2001 period, thereby violating the PM–10 standard during that period.[8]

Table 1 provides the highest measured PM–10 concentrations and the number of expected exceedances in Truckee Meadows during the 1999–2001 period.

[4] Because the annual PM–10 NAAQS was revoked effective December 18, 2006 (71 FR 61144, October 17, 2006), we do not address the annual standard in this action.

[5] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m^3) after rounding to the nearest 10 μg/m^3 (*i.e.,* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m^3 would not be an exceedance since it would be rounded to 150 μg/m^3 whereas a recorded value of 155 μg/m^3 would be an exceedance since it would be rounded to 160 μg/m^3. *See* 40 CFR part 50, appendix K, section 1.0.

[6] The comparison with the allowable expected exceedance rate of one per year is made in terms of a number rounded to the nearest tenth (fractional values equal to or greater than 0.05 are to be rounded up; *e.g.,* an exceedance rate of 1.05 would be rounded to 1.1, which is the lowest rate for nonattainment). *See* 40 CFR part 50, appendix K, section 2.1(b).

[7] The four SLAMS operating in Truckee Meadows during the 1999–2001 period were the "Reno3," "South Reno," "Galletti," and "Sparks" monitoring sites. As noted in the discussion in section III, below, two additional monitoring sites in Truckee Meadows, "Toll" and "Plumb-Kit," became operational as SLAMS in 2002 and 2006, respectively. *See* 2009 Monitoring Network Plan at 21, 36, and U.S. EPA Monitor Description Report, Monitor ID: 32–031–0025–81102–1, dated Nov. 1, 2010.

[8] Because the PM–10 sampling schedule in the Truckee Meadows area was once every six days during the 1999–2001 period, each of the exceedances measured in 1999 resulted in at least six expected exceedances for that calendar year. *See* U.S. EPA AQS Database and 40 CFR part 50, appendix K, section 3.0. Thus, the expected number of days per year with levels exceeding the standard for the 1999–2001 period (averaged over that three-year period) was more than one, which is a violation of the PM–10 NAAQS. *See* 40 CFR 50.6.

TABLE 1—MONITORED PM–10 CONCENTRATIONS AND EXPECTED EXCEEDANCES

[1999–2001]

Monitoring site name and AQS number	Maximum 24-hour (μg/m³)			Expected exceedances (calendar year)			Expected exceedances (3-year average)
	1999	2000	2001	1999	2000	2001	
Reno3 (32–031–0016)	197	109	92	6	0	0	2.0
South Reno (32–031–0020)	90	84	112	0	0	0	0
Galletti (32–031–0022)	215	100	113	6.4	0	0	2.1
Sparks (32–031–1005)	114	68	78	0	0	0	0

Source: U.S. EPA AQS database.

Thus, based on complete, quality-assured and certified monitoring data from the 1999–2001 period, we propose to determine under sections 179(c)(1) and 188(b)(2) of the Act that the Truckee Meadows serious PM–10 nonattainment area failed to attain the PM–10 standard by the applicable attainment date of December 31, 2001.

III. Proposed Determination of Attainment Based on Current Air Monitoring Data

The WCAQMD currently operates six SLAMS in the Truckee Meadows PM–10 nonattainment area. *See* Washoe County Air Quality Management Division, "2009 Ambient Air Monitoring Network Plan, Submitted to EPA Region IX July 1, 2010" ("2009 Monitoring Network Plan"). The six PM–10 monitors in Truckee Meadows are located as follows. In the City of Reno, the "Reno3" and "Galetti" monitoring sites are located at the corners of paved parking lots, in downtown Reno and just south of Interstate 80, respectively; the "Plumb-Kit" site is in a graveled area close to residences, about half a mile west of Interstate 580 and the Reno-Tahoe International Airport; and the "Toll" site is located along State Route 341, at the corner of the Washoe County School District parking lot. In South Reno, the "South Reno" monitoring site is located in an unpaved, vegetated area at the northeast corner of the Nevada Energy campus. Finally, in the City of Sparks, the "Sparks" monitoring site is located along a paved parking lot about half a mile north of Interstate 80. *See generally* 2009 Monitoring Network Plan. All of these PM–10 monitor sites are operated on a one-in-six day schedule, except that at the Reno3 site the sampling frequency was recently increased to one-in-three days. *Id.* at 6.

PM–10 data from these six monitors are quality-assured and reported by the WCAQMD to the EPA AQS database. *Id.* at 3. EPA has approved the WCAQMD's monitoring network as satisfying the network design and data adequacy requirements of 40 CFR part 58. *See* letter dated September 29, 2009, from Joseph Lapka, Acting Manager, Air Quality Analysis Office, EPA Region 9, to Andrew Goodrich, Director, Washoe County District Health Department, Washoe County AQMD. The WCAQMD annually certifies that the data it submits to AQS are complete and quality-assured. *See, e.g.,* letter dated April 23, 2010, from Craig Petersen, Senior Air Quality Specialist, WCAQMD, to David Lutz, Data Certification Contact, EPA, "Re: CY2009 Ambient Air Monitoring Data Certification."

A. Proposed Determination of Attainment

The AQS database contains three consecutive years of complete, quality-assured and certified PM–10 data for the 2007–2009 period, the most recent three-year period of such data for Truckee Meadows. We have reviewed the monitoring data for this period and found that no exceedances of the PM–10 NAAQS were recorded in the Truckee Meadows area during this time. The expected exceedance rate for this period was less than one, which means that the area attained the 24-hour PM–10 standard during this time.

Table 2 provides the highest measured PM–10 concentrations and the number of expected exceedances in Truckee Meadows during the 2007–2009 period.

TABLE 2—MONITORED PM–10 CONCENTRATIONS AND EXPECTED EXCEEDANCES

[2007–2009]

Monitoring site name and AQS number	Maximum 24-hour (μg/m³)			Expected exceedances (calendar year)			Expected exceedances (3-year average)
	2007	2008	2009	2007	2008	2009	
Reno3 (32–031–0016)	69	92	78	0	0	0	0
South Reno (32–031–0020)	75	111	59	0	0	0	0
Galletti (32–031–0022)	130	87	91	0	0	0	0
Toll (32–031–0025)	43	64	46	0	0	0	0
Plumb-Kit (32–031–0030)	108	86	93	0	0	0	0
Sparks (32–031–1005)	76	101	67	0	0	0	0

Source: U.S. EPA AQS database.

Thus, based on complete, quality-assured and certified monitoring data from the 2007–2009 period, we propose to find that the Truckee Meadows PM–10 nonattainment area is currently attaining the PM–10 NAAQS. Preliminary data available to date for calendar year 2010 also indicate that no monitor in the area has measured an exceedance of the PM–10 standard during 2010. *See* Table 3.

TABLE 3—MONITORED PM–10 CONCENTRATIONS

[Preliminary data through June 2010]

Monitoring site name and AQS number	Maximum 24-hour (μg/m³)
Reno3 (32–031–0016)	142
South Reno (32–031–0020)	52
Galletti (32–031–0022)	87
Toll (32–031–0025)	33
Plumb-Kit (32–031–0030)	77
Sparks (32–031–1005)	48

Source: U.S. EPA AQS database. These data have not yet been certified as meeting EPA's quality-assurance or data completeness requirements.

Moreover, historical data show consistent attainment in the Truckee Meadows area for each three-year period since 2000–2002. According to these data, Truckee Meadows experienced only one measured exceedance (not constituting a violation) of the PM–10 standard during the ten years since 2000, in 2005. No violations have occurred during this time period. EPA's review of quality-assured AQS data since 2000 thus confirms that the area attained the 24-hour PM–10 NAAQS in 2002 and has continued in attainment since then.[9] *See* Table 4, below and Tables 2 and 3, above.

TABLE 4—MONITORED PM–10 CONCENTRATIONS

[2000–2006]

Monitoring site name and AQS number	Maximum 24-hour (μg/m³)						
	2000	2001	2002	2003	2004	2005	2006
Reno3 (32–031–0016)	109	92	85	69	83	79	91
South Reno (32–031–0020)	84	112	45	61	54	71	52
Galletti (32–031–0022)	100	113	97	108	126	172	118
Toll (32–031–0025)	*	*	57	37	64	75	47
Plumb-Kit (32–031–0030)	*	*	*	*	*	*	91
Sparks (32–031–1005)	68	78	76	85	90	73	76

Source: U.S. EPA AQS database.

* Data not available in AQS because SLAMS not yet established.

Thus, the area's monitoring history over the past ten years shows that the Truckee Meadows area has consistently met the 24-hour PM–10 NAAQS, and the most recent three years of complete, quality-assured data show that the area continues to attain the PM–10 standard.

B. Clean Data Policy: Applicability of Clean Air Act Planning Requirements

The air quality planning requirements for serious PM–10 nonattainment areas, such as Truckee Meadows, are set out in part D, subparts 1 and 4 of title I of the Act. EPA has issued guidance in a General Preamble[10] describing how we will review State implementation plans (SIPs) and SIP revisions submitted under title I of the Act, including those containing serious PM–10 nonattainment area SIP provisions.

The subpart 1 requirements include, among other things, provisions for reasonably available control measures ("RACM"), reasonable further progress ("RFP"), emissions inventories, a permit program for construction and operation of new or modified major stationary sources in the nonattainment area ("NSR"), contingency measures, conformity, and additional SIP revisions providing for attainment where EPA determines that the area has failed to attain the standard by the applicable attainment date.

Subpart 4 requirements in CAA section 189 apply specifically to PM–10 nonattainment areas. The requirements for serious PM–10 nonattainment areas include: (1) An NSR program defining "major source" or "major stationary source" to include any source that emits or has the potential to emit at least 70 tons per year of PM–10; (2) an attainment demonstration; (3) provisions for RACM; (4) provisions for Best Available Control Measures ("BACM"); (5) quantitative milestones demonstrating RFP toward attainment by the applicable attainment date; (6) in the case of a serious nonattainment area that fails to attain by the applicable attainment date, plan revisions providing for attainment and for annual reductions in PM–10 or PM–10 precursor emissions within the area of not less than five percent of the amount of such emissions as reported in the most recent inventory ("189(d) plans"); and (7) provisions to ensure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the Administrator has determined that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area.

For nonattainment areas where EPA determines that monitored data show that the NAAQS have already been achieved, EPA's interpretation, upheld by the Courts, is that the obligation to submit certain requirements of part D, subparts 1, 2 and 4 of the Act are suspended for so long as the area continues to attain. These include requirements for attainment demonstrations, RFP, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS. Certain other obligations for PM–10 nonattainment areas, however, are not suspended, such as the NSR and BACM requirements.

This interpretation of the CAA is known as the Clean Data Policy. It is the subject of several EPA memoranda and regulations, and numerous rulemakings

[9] Although the regular PM–10 sampling schedule at the Galletti monitor is once every six days, the single exceedance measured in 2005 did not constitute a violation because the WCAQMD subsequently initiated every-day sampling at that monitor consistent with section 3.1 of 40 CFR part 50, Appendix K. *See* U.S. EPA AQS Database; *see also* "Redesignation Request and Maintenance Plan for the Truckee Meadows 24-Hour PM10 Non-Attainment Area," May 28, 2009, at 4, 5. Thus, the 2005 exceedance resulted in an average expected number of exceedances of 0.3 for each three-year period that includes 2005. For all other three-year periods between 2000 and 2006, the expected number of exceedances was 0.

[10] "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," *57 FR 13498* (April 16, 1992), as supplemented at *57 FR 18070* (April 28, 1992).

that have been published in the **Federal Register** over more than fifteen years. EPA finalized the statutory interpretation set forth in the policy in its final 8-hour ozone implementation rule, 40 CFR 51.918, as part of its "Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2" (Phase 2 Final Rule). *See* discussion in the preamble to the rule at 70 FR 71612, 71645–46 (November 29, 2005). The DC Circuit upheld this Clean Data regulation as a valid interpretation of the CAA. *NRDC* v. *EPA,* 571 F. 3d 1245 (DC Cir. 2009). EPA also finalized its interpretation in an implementation rule for the NAAQS for particulate matter of 2.5 microns or less ($PM_{2.5}$). 40 CFR 51.1004(c). Thus, EPA has codified the policy when it established final rules governing implementation of new or revised NAAQS for the pollutants. 70 FR 71612, 71644–46 (November 29, 2005); 72 FR 20585, 20665 (April 25, 2007) ($PM_{2.5}$ Implementation Rule). Otherwise, EPA applies the policy in individual rulemakings related to specific nonattainment areas. *See, e.g.,* 75 FR 27944 (May 19, 2010) (determination of attainment of the PM–10 standard in Coso Junction, California); 75 FR 6571 (February 10, 2010) (determination of attainment of the 1-hour ozone standard in Baton Rouge, Louisiana).

In its many applications of the Clean Data Policy interpretation to PM–10, EPA has explained that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," our $PM_{2.5}$ Implementation Rule, and our December 14, 2004 memorandum from Stephen D. Page entitled "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards," are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM–10. *See, e.g.,* 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area); 72 FR 14422 (March 28, 2007) (Miami, Arizona area); and 75 FR 27944 (May 19, 2010) (Coso Junction, California area). EPA's interpretation that the obligation to submit an attainment demonstration, RACM, RFP contingency measures, and other measures related to attainment under part D of title I of the CAA, pertains whether the standard is PM–10, ozone or PM–2.5.

In our proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM–10 standard, EPA set forth at length our rationale for applying the Clean Data Policy to PM–10. The Ninth Circuit subsequently upheld this rulemaking, and specifically EPA's Clean Data Policy in the context of the PM–10 standard. *Latino Issues Forum* v. *EPA,* Nos. 06–75831 and 08–71238 (9th Cir.), Memorandum Opinion, March 2, 2009. In rejecting petitioner's challenge to the Clean Data Policy for PM–10, the Court stated:

> As the EPA rationally explained, if an area is in compliance with PM–10 standards, then further progress for the purpose of ensuring attainment is not necessary.

EPA noted in its prior PM–10 rulemakings that the reasons for relieving an area that has attained the relevant standard of certain obligations under part D, subparts 1 and 2, apply equally to part D, subpart 4, which contains specific attainment demonstration and RFP provisions for PM–10 nonattainment areas. In EPA's Phase 2 8-Hour Ozone Final Rule and ozone and PM–2.5 Clean Data memoranda, EPA established that it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with related requirements, so as not to require SIP submissions if an area subject to those requirements is already attaining the NAAQS (*i.e.* attainment of the NAAQS is demonstrated with three consecutive years of complete, quality-assured air quality monitoring data). Every U.S. Circuit Court of Appeals that has considered the Clean Data Policy has upheld EPA rulemakings applying its interpretation, for both ozone and PM–10. *Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996); *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation* v. *EPA,* N. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion), *Latino Issues Forum,* supra.

It has been EPA's longstanding interpretation that the general provisions of part D, subpart 1 of the Act (sections 171 and 172) do not require the submission of SIP revisions concerning RFP for areas already attaining the ozone NAAQS. In the General Preamble, we stated:

> [R]equirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.

57 FR at 13564. EPA's prior determinations of attainment for PM–10, *e.g.,* for the San Joaquin Valley and Coso Junction areas in California, make clear that the same reasoning applies to the PM–10 provision of part D, subpart 4. *See* 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

With respect to RFP, section 171(1) states that, for purposes of part D of title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), the ozone-specific RFP requirements of sections 182(b) and (c), or the specific RFP requirements for PM–10 areas of part D, subpart 4, section 189(c)(1), the stated purpose of RFP is to ensure attainment by the applicable attainment date. Section 189(c)(1) states that:

> Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

Although this section states that revisions shall contain milestones which are to be achieved until the area is redesignated to attainment, such milestones are designed to show reasonable further progress "toward attainment by the applicable attainment date," as defined by section 171. Thus, it is clear that once the area has attained the standard, no further milestones are necessary or meaningful. This interpretation is supported by language in section 189(c)(3), which mandates that a State that fails to achieve a milestone must submit a plan that assures that the State will achieve the next milestone or attain the NAAQS if there is no next milestone. Section 189(c)(3) assumes that the requirement to submit and achieve milestones does not continue after attainment of the NAAQS.

In the General Preamble, we noted with respect to section 189(c) that the purpose of the milestone requirement "is 'to provide for emission reductions adequate to achieve the standards by the applicable attainment date' (H.R. Rep.

No. 490 101st Cong., 2d Sess. 267 (1990))." 57 FR 13539 (April 16, 1992). If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled.[11] EPA took this position with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 memorandum with respect to the requirements of sections 182(b) and (c). In our prior applications of the Clean Data Policy to PM–10, we have extended that interpretation to the specific provisions of part D, subpart 4. *See, e.g.,* 71 FR 40952 and 71 FR 63642 (proposed and final determination of attainment for San Joaquin Valley); 75 FR 13710 and 75 FR 27944 (proposed and final determination of attainment for Coso Junction).

In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." 57 FR 13564. *See also* our September 4, 1992 memorandum from John Calcagni, entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (Calcagni memo), p. 6.

Similarly, the requirements of section 189(c)(2) with respect to milestones no longer apply so long as an area has attained the standard. Section 189(c)(2) provides in relevant part that:

> Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration * * * that the milestone has been met.

Where the area has attained the standard and there are no further milestones, there is no further requirement to make a submission showing that such milestones have been met. As noted above, this is consistent with the position that EPA took with respect to the general RFP requirement of section 172(c)(2) in the April 16, 1992 General Preamble and also in the May 10, 1995 Seitz memorandum with respect to the requirements of section 182(b) and (c). In the May 10, 1995 Seitz memorandum, EPA also noted that section 182(g), the milestone requirement of subpart 2, which is analogous to provisions in section 189(c), is suspended upon a determination that an area has attained. The memorandum, also citing additional provisions related to attainment demonstration and RFP requirements, stated:

> Inasmuch as each of these requirements is linked with the attainment demonstration or RFP requirements of section 182(b)(1) or 182(c)(2), if an area is not subject to the requirement to submit the underlying attainment demonstration or RFP plan, it need not submit the related SIP submission either.

1995 Seitz memorandum at 5.

With respect to the attainment demonstration requirements of section 189(a)(1)(B), an analogous rationale leads to the same result. Section 189(a)(1)(B) requires that the plan provide for "a demonstration (including air quality modeling) that the [SIP] will provide for attainment by the applicable attainment date * * *." As with the RFP requirements, if an area is already monitoring attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of the section 172(c) requirements provided by EPA in the General Preamble, the Page memo, and the section 182(b) and (c) requirements set forth in the Seitz memo. As EPA stated in the General Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." 57 FR at 13564.

Other SIP submission requirements are linked with these attainment demonstration and RFP requirements, and similar reasoning applies to them. These requirements include the contingency measure requirements of sections 172(c)(9) and 182(c)(9). We have interpreted the contingency measure requirements of sections 172(c)(9) and 182(c)(9) as no longer applying when an area has attained the standard because those "contingency measures are directed at ensuring RFP and attainment by the applicable date." 57 FR at 13564; Seitz memo, pp. 5–6.

Both sections 172(c)(1) and 189(a)(1)(C) require "provisions to assure that reasonably available control measures" (*i.e.,* RACM) are implemented in a nonattainment area. The General Preamble, 57 FR at 13560 (April 16, 1992), states that EPA interprets section 172(c)(1) so that RACM requirements are a "component" of an area's attainment demonstration. Thus, for the same reason the attainment demonstration no longer applies by its own terms, the requirement for RACM no longer applies. EPA has consistently interpreted this provision to require only implementation of potential RACM measures that could contribute to reasonable further progress or to attainment. General Preamble, 57 FR at 13498. Thus, where an area is already attaining the standard, no additional RACM measures are required.[12] EPA is interpreting section 189(a)(1)(C) consistent with its interpretation of section 172(c)(1).[13]

Finally, in the case of a serious PM–10 nonattainment area that does not attain the PM–10 standard by the applicable attainment date, sections 189(d) and section 179(d) require the State to submit additional SIP revisions providing for attainment of the standard. Section 189(d), which applies to any serious PM–10 nonattainment area that fails to attain by the applicable attainment date, requires the State to submit "plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent" of inventoried PM–10 and PM–10 precursor emissions. Section 179(d), which applies to any nonattainment area for which EPA has made a determination under section 179(c) of failure to attain by the applicable attainment date, requires the State to submit plan revisions meeting

[11] Thus, we believe that it is a distinction without a difference that section 189(c)(1) speaks of the RFP requirement as one to be achieved until an area is "redesignated attainment," as opposed to section 172(c)(2), which is silent on the period to which the requirement pertains, or the ozone nonattainment area RFP requirements in sections 182(b)(1) or 182(c)(2), which refer to the RFP requirements as applying until the "attainment date," since section 189(c)(1) defines RFP by reference to section 171(1) of the Act. Reference to section 171(1) clarifies that, as with the general RFP requirements in section 172(c)(2) and the ozone-specific requirements of section 182(b)(1) and 182(c)(2), the PM-specific requirements may only be required "for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." 42 U.S.C. section 7501(1). As discussed in the text of this rulemaking, EPA interprets the RFP requirements, in light of the definition of RFP in section 171(1), and incorporated in section 189(c)(1), to be a requirement that no longer applies once the standard has been attained.

[12] The EPA's interpretation that the statute only requires implementation of RACM measures that would advance attainment was upheld by the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *EPA, 314 F.3d 735, 743–745 (5th Cir. 2002),* and by the United States Court of Appeals for the DC Circuit (*Sierra Club* v. *EPA, 294 F.3d 155, 162–163 (DC Cir. 2002)).*

[13] EPA does not, however, interpret the BACM requirement in section 189(b)(1)(B) of the CAA as being suspended upon a determination of attainment. We note that we have approved several PM–10 control measures into the Truckee Meadows portion of the Nevada SIP as satisfying BACM control requirements. *See* 71 FR 14386 (March 22, 2006), 72 FR 25969 (May 8, 2007), and 72 FR 33397 (June 18, 2007).

the requirements of CAA sections 110 and 172 and "such additional measures as the Administrator may reasonably prescribe" including measures that can be feasibly implemented in the area.

As discussed above in section II of this document, the Truckee Meadows is a serious nonattainment area that did not attain the PM–10 standard by the applicable attainment date of December 31, 2001. *See* CAA 188(c)(2).[14] However, as discussed in section III.A of this document, the area did attain the PM–10 standard beginning in 2002, and has continued in attainment during the decade that followed. As explained at length in the memoranda and rulemakings cited above, the obligations to submit SIPs for RFP, attainment demonstrations, and certain related SIP submissions are suspended once EPA determines an area has attained the standard, since their purpose, to achieve attainment, will already have been fulfilled. Section 189(d) requires submittal of plan revisions "which provide for attainment of the PM–10 air quality standard" and annual emission reductions of at least five percent "until attainment." Similarly, section 179(d) requires submittal of plan revisions meeting the requirements of section 110 and section 172, which requires generally that submitted plan provisions "provide for attainment of the national primary ambient air quality standards." Because these requirements apply to nonattainment areas that have failed to attain a standard by the applicable attainment date and are directed at achieving attainment, we believe that the obligations to submit plans under these requirements are suspended when EPA determines that the area has attained the standard, for as long as the area continues to attain. Thus, based on our proposed determination that the Truckee Meadows area is now attaining the PM–10 NAAQS in section III.A above, we propose to suspend the requirement for additional SIP submittals under sections 189(d) and 179(d).

We emphasize that the suspension of the obligation to submit SIP revisions concerning these RFP, attainment demonstration, RACM, and other related requirements exists only for as long as the Truckee Meadows area continues to monitor attainment of the standard. If EPA determines, after notice-and-comment rulemaking, that the area has monitored a violation of the NAAQS, the basis for the requirements being suspended would no longer exist. In that case, the area would again be subject to a requirement to submit the pertinent SIP revision or revisions and would need to address those requirements. Thus, a final determination that the area need not submit one of the pertinent SIP submittals amounts to no more than a suspension of the requirements for so long as the area continues to attain the standard. Only if and when EPA redesignates the area to attainment would the area be relieved of these submission obligations. Attainment determinations under the Clean Data policy do not shield an area from obligations unrelated to attainment in the area, such as provisions to address pollution transport.

As set forth above, based on our proposed determination that the Truckee Meadows area is currently attaining the PM–10 NAAQS (*see* section III.A above), we propose to find that the obligations to submit planning provisions to meet the requirements for an attainment demonstration, reasonable further progress plans, reasonably available control measures, contingency measures, and additional SIP revisions under sections 189(d) and 179(d) no longer apply for so long as the area continues to monitor attainment of the PM–10 NAAQS.[15] If in the future, EPA determines after notice-and-comment rulemaking that the area again violates the PM–10 NAAQS, the basis for the attainment demonstration, RFP, RACM, contingency measure, and additional section 189(d) and 179(d) plan requirements being suspended would no longer exist. In that event, we would notify the State that we have determined that the area is no longer attaining the PM–10 standard and provide notice to the public in the **Federal Register.**

IV. EPA's Proposed Actions

Pursuant to CAA sections 188(b)(2) and 179(c)(1) and based on complete, quality-assured data for the 1999–2001 period meeting the requirements of 40 CFR part 50, appendix K, we propose to determine that the Truckee Meadows nonattainment area failed to attain the 24-hour PM–10 NAAQS by the applicable attainment date of December 31, 2001. Failure by a "serious" nonattainment area such as Truckee Meadows to attain the PM–10 NAAQS by the applicable attainment date triggers a requirement for the State to submit additional plan revisions providing for attainment under CAA sections 189(d) and 179(d).

Separately and independently of the determination proposed above, we also propose to determine, based on the most recent three years of complete, quality-assured data meeting the requirements of 40 CFR part 50, appendix K, that the Truckee Meadows area is currently attaining the 24-hour PM–10 NAAQS. In conjunction with and based upon our proposed determination that Truckee Meadows is currently attaining the standard, EPA proposes to determine that the obligation to submit the following CAA requirements is not applicable for so long as the area continues to attain the PM–10 standard: The part D, subpart 4 obligations to provide an attainment demonstration pursuant to section 189(a)(1)(B), the RACM provisions of section 189(a)(1)(C), the RFP provisions of section 189(c), the requirement for 189(d) plans, the attainment demonstration, RACM, RFP and contingency measure provisions of part D, subpart 1 contained in section 172 of the Act, and the requirement for additional plan revisions in section 179(d) of the Act.

This proposed action, if finalized, would not constitute a redesignation to attainment under CAA section 107(d)(3) because we would not yet have approved a maintenance plan as required under section 175A of the CAA or determined that the area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 would remain serious nonattainment for this area until such time as EPA determines that Nevada meets the CAA requirements for redesignation of the Truckee Meadows area to attainment.

V. Statutory and Executive Order Reviews

This action proposes to make two separate determinations regarding attainment based on air quality, and would, if finalized, result in the suspension of certain Federal requirements, and/or would not impose additional requirements beyond those imposed by State law or by the Clean

[14] Truckee Meadows experienced two exceedances of the PM–10 NAAQS in 1999 which resulted in an expected number of days per year with levels above 150 μg/m^3 for the 1999–2001 period (averaged over that three-year period) of more than one, thereby violating the PM–10 standard during that period. *See* U.S. EPA AQS Database; 40 CFR 50.6.

[15] We note that our application of the Clean Data Policy to Truckee Meadows is consistent with actions we have taken for other PM–10 nonattainment areas that we also determined were attaining the standard. *See* 71 FR 6352 (February 8, 2006) (Ajo, Arizona area); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area); 72 FR 14422 (March 28, 2007) (Miami, Arizona area); and 75 FR 27944 (May 19, 2010) (Coso Junction, California).

Air Act. For that reason, this proposed action:

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

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Dated: February 17, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–4376 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas; Notice of Meeting

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Negotiated Rulemaking Committee meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas.

DATES: Meetings will be held on March 8, 2011, 9:30 a.m. to 6 p.m.; March 9, 2011, 9 a.m. to 6 p.m.; and March 10, 2011, 9 a.m. to 4 p.m.

ADDRESSES: Meetings will be held at the Radisson Hotel Reagan National Airport, 2020 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 920–8600.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Nicole Patterson, Office of Shortage Designation, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–9027, E-mail: *npatterson@hrsa.gov* or visit *http://www.hrsa.gov/advisorycommittees/shortage/*.

SUPPLEMENTARY INFORMATION: *Status:* The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas (Committee) is to establish criteria and a comprehensive methodology for Designation of Medically Underserved Populations and Primary Care Health Professional Shortage Areas, using a Negotiated Rulemaking (NR) process. It is hoped that use of the NR process will yield consensus among technical experts and stakeholders on a new rule for designation of medically underserved populations and primary care health professions shortage areas, which would be published as an Interim Final Rule in accordance with Section 5602 the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will be held on Tuesday, March 8; Wednesday, March 9; and Thursday, March 10. It will include a discussion of various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The Thursday meeting will also include development of the agenda for the next meeting. Members of the public will have the opportunity to provide comments during the meeting on Thursday afternoon, March 10.

Requests from the public to make oral comments or to provide written comments to the Committee should be sent to Nicole Patterson at the contact address above at least 10 days prior to the first day of the meeting, Wednesday, March 8. The meeting will be open to the public as indicated above, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed above at least 10 days prior to the meeting.

The Committee is working to meet the requirement in the Affordable Care Act under tight timeframes. As work has progressed, it has been determined that more time will be needed to complete the assignment due to its complexity, resulting in the Committee's decision to extend planned meetings. As a result, the logistical challenges encountered with extending planned meetings and scheduling additional meetings hindered an earlier publishing of the meeting notice.

Dated: February 23, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–4388 Filed 2–25–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 6

RIN 0906–AA77

Federal Tort Claims Act (FTCA) Medical Malpractice Program Regulations: Clarification of FTCA Coverage for Services Provided to Non-Health Center Patients

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federally Supported Health Centers Assistance Act of 1992, as amended in 1995 (FSHCAA), provides for liability protection for

certain grantees of the Public Health Service and for certain individuals associated with these grantees. The Health Resources and Services Administration (HRSA) is the operating division within the Department responsible for administering certain aspects of FSHCAA. HRSA proposes replacing the current regulations with the key text and examples of activities that have been determined, consistent with provisions of the existing regulation, to be covered by the FTCA, as previously published in the Sept. 25, 1995 **Federal Register.** In addition, HRSA proposes adding an example of services covered under the FTCA involving individual emergency care provided to a non-health center patient and updating the September 1995 Notice immunization example to include events to immunize individuals against infectious illnesses. When finalized, the amended regulation will supersede the September 1995 Notice.

DATES: Written comments must be received on or before April 29, 2011. Subject to consideration of the comments submitted, the Department intends to publish final regulations.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0906–AA77, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: OQDComments@hrsa.gov.* Include "RIN 0906–AA77" in the subject line of the message.
- *Mail:* Correspondence should be marked "Health Center FTCA Program Regulation Comments" and mailed to: Office of Quality and Data, Bureau of Primary Health Care, Health Resources and Services Administration, U.S. Department of Health and Human Services, 5600 Fishers Lane, Room 15C–26, Rockville, Maryland 20857.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be available for public inspection and copying without charge at Parklawn Building, 5600 Fishers Lane, Room 15C–26, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Suma Nair, Director, Office of Quality and Data, Bureau of Primary Health Care, Health Resources and Services Administration, U.S. Department of Health and Human Services, 5600 Fishers Lane, Room 15C–26, Rockville, Maryland 20857, Phone: (301) 594–0818.

SUPPLEMENTARY INFORMATION: Section 224(a) of the Public Health Service (PHS) Act (42 U.S.C. 233(a)) provides that the remedy against the United States provided under the Federal Tort Claims Act (FTCA) resulting from the performance of medical, surgical, dental or related functions by any commissioned officer or employee of the PHS while acting within the scope of his office or employment shall be exclusive of any other related civil action or proceeding. The Federally Supported Health Centers Assistance Act of 1992 (Pub. L. 102–501), as amended in 1995 (FSHCAA), provides that, subject to its provisions, certain entities receiving funds under section 330 of the PHS Act, as well as any officers, governing board members, and employees, and certain contractors of these entities, shall be deemed for the purposes of medical malpractice liability to be employees of the PHS within the exclusive remedy provision of section 224(a) of the PHS Act.

A final rule implementing Public Law 102–501 was published in the **Federal Register** (60 FR 22530) on May 8, 1995, and added a new part 6 to 42 CFR chapter 1, subchapter A. This rule describes the eligible entities and the covered individuals who are or may be determined by the Secretary to be within the scope of the FTCA protection afforded by the Act.

Section 6.6, also published in the May 8, 1995 rule, describes acts and omissions that are covered by FSHCAA (covered activities or covered services). Subsection 6.6(d) restates the statutory criteria that may support a determination of coverage for services provided to individuals who are not patients of the covered entity.

Subsection 6.6(e) provides examples of situations within the scope of subsection 6.6(d). Questions were raised, however, about the specific situations encompassed by 6.6(d) and 6.6(e) and about the process for the Secretary to make the determinations provided by those subsections.

HRSA decided that it would be impractical and burdensome to require a separate application and determination of coverage for certain situations described in the examples set forth in 6.6(e), as further discussed in the September 1995 Notice (60 FR 49417). For those situations, the Department has set forth its determination that coverage is provided under 42 CFR 6.6(d) without the need for a separate application, so long as other requirements for coverage are met, such as a determination that the entity is a covered entity, a determination that the individual is a covered individual, and that the acts or omissions by those individuals occur within the scope of employment.

HRSA proposes including the key text and examples of the September 1995 Notice in 42 CFR 6.6(e), replacing the current regulatory text at 42 CFR 6.6(e). HRSA also proposes updating the "Immunization Campaign" example to clarify that this covered situation includes events to immunize individuals against infectious illnesses and does not limit coverage to only childhood vaccinations. In addition, HRSA proposes adding the following additional new example as subsection 6.6(e)(4) to set forth its determination of FTCA coverage for services to non-health center patients in certain individual emergency situations. This addition is expected to provide assurance of FTCA coverage in these situations and encourage reciprocal assistance by non-health center clinicians for health center patients in similar emergencies.

We will consider comments on this proposed rule that are received within 60 days of publication of this notice in the **Federal Register**. After the comment period closes, we will publish a final rule in the **Federal Register**. The document will include a discussion of any comments we receive and any changes.

Federalism

HRSA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. HRSA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, HRSA has concluded that the proposed rule does not contain policies that have Federalism implications as defined in the Executive Order and, consequently, a Federalism summary impact statement is not required.

Other Impacts

HRSA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health

and safety, and other advantages; distributive impacts; and equity). HRSA believes that this proposed rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule simply updates an existing regulation to add further details to the description of certain situations that are covered by the FTCA, and because such coverage is provided for under Federal law, HRSA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any 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 $100,000,000 or more (adjusted annually for inflation) in any one year." HRSA does not expect this proposed rule to result in any one-year expenditure that would meet or exceed this amount.

Paperwork Reduction Act

This rule does not contain any new information collection or recordkeeping requirements that fall under the purview of the Paperwork Reduction Act of 1995. The recordkeeping requirements contained in this rule are part of normal business practice and do not require the collection of new information or impose additional requirements beyond current routine practice.

List of Subjects in 42 CFR Part 6

Emergency medical services, Health care, Health facilities, Tort claims.

Dated: May 27, 2010.

Mary Wakefield,

Administrator, Health Resources and Services Administration.

Approved: January 24, 2011.

Kathleen Sebelius,

Secretary.

For the reasons stated in the preamble, we are proposing to amend 42 CFR part 6 as follows:

PART 6—FEDERAL TORT CLAIMS ACT COVERAGE OF CERTAIN GRANTEES AND INDIVIDUALS

1. The authority citation for part 6 continues to read as follows:

Authority: Sections 215 and 224 of the Public Health Service Act, 42 U.S.C. 216 and 233.

2. In § 6.6, revise paragraph (e) to read as follows:

§ 6.6 Covered acts and omissions.

* * * * *

(e) For the specific activities described in this paragraph, when carried out by an entity that has been covered under paragraph (c) of this section, the Department has determined that coverage is provided under paragraph (d) of this section, without the need for specific application for a coverage determination under paragraph (d) of this section, if the activity or arrangement in question fits squarely within the examples of activities listed below; otherwise, the health center should seek a particularized determination of coverage under paragraph (d) of this section.

(1) *Community-Wide Interventions.* (i) *School-Based Clinics.* Health center staff provide primary and preventive health care services at a facility located in a school or on school grounds. The health center has a written affiliation agreement with the school.

(ii) *School-Linked Clinics.* Health center staff provide primary and preventive health care services, at a site not located on school grounds, to students of one or more schools. The health center has a written affiliation agreement with each school.

(iii) *Health Fairs.* Health center staff conduct an event to attract community members for purposes of performing health assessments. Such events may be held in the health center, outside on its grounds, or elsewhere in the community.

(iv) *Immunization Campaigns.* Health center staff conduct an event to immunize individuals against infectious illnesses. The event may be held at the health center, schools, or elsewhere in the community.

(v) *Migrant Camp Outreach.* Health center staff travel to a migrant farmworker residence camp to conduct intake screening to determine those in need of clinic services (which may mean health care is provided at the time of such intake activity or during subsequent clinic staff visits to the camp).

(vi) *Homeless Outreach.* Health center staff travel to a shelter for homeless persons, or a street location where homeless persons congregate, to conduct intake screening to determine those in need of clinic services (which may mean health care is provided at the time of such intake activity or during subsequent clinic staff visits to that location).

(2) *Hospital-Related Activities.* Periodic hospital call or hospital emergency room coverage is required by the hospital as a condition for obtaining hospital admitting privileges. There must also be documentation for the particular health care provider that this coverage is a condition of employment at the health center.

(3) *Coverage-Related Activities.* As part of a health center's arrangement with local community providers for after-hours coverage of its patients, the health center's providers are required by their employment contract to provide periodic or occasional cross-coverage for patients of these providers.

(4) *Coverage in Certain Individual Emergencies.* A health center provider is providing or undertaking to provide covered services to a health center patient within the approved scope of project of the center, or to an individual who is not a patient of the health center under the conditions set forth in this rule, when the provider is then asked, called upon, or undertakes, at or near that location and as the result of a non-health center patient's emergency situation, to temporarily treat or assist in treating that non-health center patient. In addition to any other documentation required for the original services, the health center must have documentation (such as employee manual provisions, health center bylaws, or an employee contract) that the provision of individual emergency treatment, when the practitioner is already providing or undertaking to provide covered services, is a condition of employment at the health center.

[FR Doc. 2011–3439 Filed 2–25–11; 8:45 am]

BILLING CODE 4160–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[WCB: WC Docket Nos. 07–38, 09–190, 10–132, 11–10; FCC 11–14]

Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission considers whether and how to reform the Form 477 data program, which serves as the Commission's primary tool for collecting broadband and local telephone data. The Commission

believes it is time to consider whether modifying the Form 477 will improve the Commission's ability to carry out its duties under the Communications Act of 1934, as amended (the Act), and is an important part of the Commission's larger initiative to modernize and streamline how the Commission collects, uses, and disseminates data.

DATES: Comments are due on or before March 30, 2011, and reply comments are due on or before April 14, 2011. Written comments on the Paperwork Reduction Act proposed or modified information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before April 29, 2011.

ADDRESSES: You may submit comments, identified by WC Docket No.11–10, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller at (202) 418–1507, Wireline Competition Bureau, Industry Analysis and Technology Division. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith Boley Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket Nos. 07–38, 09–190, 10–132 and 11–10, adopted and released on February 8, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
  - *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *fcc504@fcc.gov;* phone: (202) 418–0530 or (202) 418–0432 (TTY).

In addition, one copy of each pleading must be sent to each of the following:

- The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160; and
- Jeremy Miller, Competition Policy Division, Industry Analysis and Technology Division, 445 12th Street, SW., Room 5–B145, Washington, DC 20554; e-mail: *Jeremy.Miller@fcc.gov* or telephone number (202) 418–1507.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (TTY), or by facsimile at (202) 488–5563.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

Initial Paperwork Reduction Act of 1995 Analysis

This document proposes new or revised information collection requirements. The reporting requirements, if any, that might be adopted pursuant to this NPRM are too speculative at this time to request comment from the OMB or interested parties under section 3507(d) of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Therefore, if the Commission determines that reporting is required, it will seek comment from the OMB and interested parties prior to any such requirements taking effect. Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we will seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees." Nevertheless, interested parties are encouraged to comment on whether any new or revised information collection is necessary, and if so, how the Commission might minimize the burden of any such collection.

Synopsis of the Further Notice of Proposed Rulemaking

I. Introduction

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether and how to reform the Form 477 data program to improve the Commission's ability to carry out its statutory duties, while streamlining and minimizing the overall costs of the program, including the burdens imposed on service providers. This NPRM is an important part of our larger Data Innovation Initiative to modernize and streamline how we collect, use, and disseminate data, and to ensure that all of the data we collect is useful for supporting informed policymaking, promoting competition, and protecting consumers. We are focused on giving careful consideration to the benefits and burdens of our data collections, and eliminating unnecessary collections where possible. For example, the Initiative already has identified over twenty data collections across the entire Commission that may be outdated and ripe for elimination, as well as a number of statutory reporting obligations that may have outlived their usefulness. Similarly, for each type of data discussed in this NPRM, we will consider the burdens and benefits of any proposed changes. Our goal is to ensure that the Commission has the data it needs, while minimizing the overall burdens of data collection.

2. Established in 2000, Form 477 is the Commission's primary tool for collecting data about broadband and local telephone networks and services. The form requires providers of broadband service, local telephone service, interconnected Voice over Internet Protocol (VoIP) service, and mobile telephone service to report the number of subscribers they have in their respective service areas. But the Commission has in the past noted shortcomings of the data collected using Form 477, and after more than a decade of rapid innovation in the market for broadband and telephone services, and consistent with the Government Accountability Office's (GAO) recent finding that the Commission's broadband data collection fails to collect key data required to inform policy decisions and generally needs improvement, we believe it may be time to modify Form 477 to better serve the needs of the Commission, Congress, service providers, and consumers. In fact, since the last modification of Form 477, Congress directed the FCC to collect additional information to supplement its analysis of broadband deployment and availability. As we have noted before, Form 477 collects data that are "a critical precursor" to the Commission's ability to fulfill its statutory duties, and provides the Commission with "a set of data of uniform quality and reliability" superior to other publicly available information sources. Form 477 also enables us to fulfill our obligation to reduce government regulation wherever possible, by providing "a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has developed sufficiently to justify deregulation."

II. Background

A. Form 477 Data Program

3. *Development of FCC Form 477.* The Commission initiated the Form 477 data program in May 2000 to "materially improve its ability to develop, evaluate, and revise policy" for broadband and telephone services, and "to provide valuable benchmarks for Congress, the Commission, other policy makers, and consumers." The Commission designed the program as a standardized collection, with separate sections on subscriptions to broadband services, local telephone service competition, and mobile telephony services.

4. In establishing the Form 477 framework for broadband data, the Commission anticipated that a "regular and consistent survey of broadband deployment" would substantially assist it in fulfilling its statutory duty under Section 706 of the Telecommunications Act to report to Congress on broadband deployment and availability, and to encourage the deployment of broadband to all Americans. To that end, the initial Form 477 collected broadband subscribership data. Specifically, the form collected data from facilities-based providers on the numbers of connections to the Internet in service to consumers in each State, and whether such connections used the provider's own facilities, unbundled network elements (UNEs), special-access lines or other leased lines, or wireless channels. The Commission established 200 kilobits per second (kbps) as the minimum transfer-speed threshold for the connections it would track, and required providers to identify the technology used to provide the connections, the percentage of connections offered to residential customers and small businesses, and each ZIP code in which the providers had at least one connection in service.

5. The initial Form 477 likewise collected subscribership data for local telephone service, including data from incumbent local exchange carriers (LECs) and competitive LECs on the number of voice-grade equivalent lines and fixed wireless channels in service for the provision of local exchange or exchange access service to end-user customers and for resale. The original Form 477 required LECs to report the five-digit ZIP codes in which customers served, by reported lines and wireless channels. Mobile telephony providers were required to report their total subscribers by State, and the percentage

of customers billed directly by the reporting provider.

6. The initial Form 477 program did not require small providers to file reports. Specifically, broadband service providers with fewer than 250 connections in service in a State were not required to file the form. LECs with fewer than 10,000 voice-grade equivalent lines or wireless channels in service, and mobile telephony providers with fewer than 10,000 subscribers were similarly not required to file.

7. *Revisions to Form 477.* The Commission has twice modified Form 477. First, in 2004, the Commission revised the Form 477 program to require submissions from all facilities-based providers of broadband connections, in order to capture a more comprehensive picture of broadband deployment in rural areas. Further, the Commission required filers to report the percentage of their connections that fell into five speed tiers. The Commission also required all wired and fixed wireless providers to report the technologies used to provide service in the ZIP codes in which at least one connection was in service. The Commission acknowledged that mobile broadband service differs in some respects from fixed broadband service, and required filers reporting mobile wireless broadband subscribers to list the ZIP codes that "best represent the filers' mobile wireless broadband coverage areas."

8. The Commission next refined the Form 477 data program in 2008, establishing the framework that is currently in place. The Commission decided to collect more granular subscription and speed data, and to improve the quality of data on mobile wireless broadband services. All wireline and terrestrial-fixed wireless broadband service providers must now report the numbers of subscribers at the census-tract level, broken down by technology and more disaggregated speed tiers; and the percentage of subscribers that are residential. Incumbent LECs must continue to report the percentage of their service areas where DSL connections are available to residential premises, and cable system operators must do the same with regard to cable modem service availability. Providers of terrestrial mobile wireless broadband services must continue to submit their broadband subscriber totals on a State-by-State basis, rather than at the census-tract level, and must report on the census tracts that "best represent" their broadband service footprint for each speed tier in which they offer service.

9. The 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, also required providers of interconnected VoIP services to report the number of subscribers in each State, the number of subscribers who purchase the service in conjunction with the purchase of a broadband connection and, of those, the types of connections purchased. Interconnected VoIP providers also must report the percentage of subscribers who can use the service over any broadband connection.

10. *2008 Further NPRM.* The Commission sought comment in 2008 on further revisions to Form 477, including whether and how to institute a national broadband availability mapping program. The Commission tentatively concluded that it "should collect information that providers use to respond to prospective customers to determine on an address-by-address basis whether service is available." The Commission sought comment on standardized collection formats; whether it should collect information on pricing and actual speeds of broadband services; how generally to maintain the confidentiality of broadband data; whether the Commission should conduct and publish periodic consumer surveys on broadband services; and whether it should require LECs and interconnected VoIP providers to report the number of subscribers in geographic units below the State level, either by ZIP code or census tract.

B. Other Developments Relating to Data Collection

11. Since the adoption of the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, a number of legislative and regulatory developments have affected the obligations of the Commission and other government agencies to collect data related to telephone and broadband services.

1. Broadband Data Improvement Act

12. On October 10, 2008, Congress enacted the Broadband Data Improvement Act (BDIA), expressly finding that "[i]mproving Federal data on the deployment and adoption of broadband service will assist in the development of broadband technology across all regions of the nation." The BDIA imposed several new obligations on the Commission and other Federal agencies.

a. Revisions to Section 706 Reporting Requirements

13. The BDIA amended Section 706 of the Telecommunications Act of 1996 to improve the quality and quantity of data the Commission collects on the deployment and adoption of broadband services. First, the BDIA requires the Commission to publish its Section 706 reports "annually" instead of "regularly," as previously required. Second, the BDIA requires the Commission to compile "demographic information for unserved areas" as part of the annual Section 706 inquiry. Specifically, the BDIA requires that the Commission "compile a list of geographical areas not served by any provider of advanced telecommunications capability." If Census Bureau data are available, the Commission must "determine, for each such unserved area—(1) The population; (2) the population density; and (3) the average per capita income."

14. The BDIA also requires the Commission to perform an international comparison in its annual broadband deployment report conducted pursuant to Section 706 of the Telecommunications Act. Specifically, Section 1303 of Title 47 now requires the Commission to "include information comparing the extent of broadband service capability (including data transmission speeds and price for broadband service capability) in a total of 75 communities in at least 25 countries abroad for each of the data rate benchmarks for broadband service utilized by the Commission to reflect different speed tiers."

b. The GAO's Report on Broadband Metrics and Standards

15. In addition, the BDIA required the GAO's Comptroller General to conduct a study and issue a report on broadband metrics and standards by October 10, 2009. That report evaluated the "broadband metrics that may be used by industry and the Federal Government [including the Commission] to provide users with more accurate information about the cost and capability of their broadband connection[s], and to better compare the deployment and penetration of broadband in the United States with other countries."

16. The GAO found that current measures of broadband performance "have limitations," that "views were mixed on potential alternatives, and ongoing [broadband data collection] efforts need improvement." Further, stakeholders reported to the GAO that the data collected by the FCC Form 477 "[do] not include information on availability, price, or actual delivered speeds, which limits the ability to make comparisons across the country and inform policy or investment decisions."

2. Recovery Act

17. In February 2009, Congress enacted the American Recovery and

Reinvestment Act (ARRA), which directed the Commission to develop a national broadband plan to ensure that all people of the United States have access to broadband. The ARRA also directed the National Telecommunications and Information Administration (NTIA) to develop and maintain a comprehensive nationwide and publicly available map of broadband service capability and availability.

a. National Broadband Plan

18. Section 6001(k) of the ARRA instructed the Commission to submit to Congress a national broadband plan that would analyze mechanisms for ensuring broadband access by all people of the United States, provide a detailed strategy for achieving affordability and maximum usage, and include a plan for use of broadband to advance national purposes such as education, health care, energy, and public safety. The resulting National Broadband Plan, published on March 16, 2010, noted the necessity for "continuous collection and analysis of detailed data on competitive behavior," and stressed the need for the Commission to conduct "more thorough data collection to monitor and benchmark competitive behavior." In particular, recommendation 4.2 of the Plan suggested that the Commission "revise Form 477 to collect data relevant to broadband availability, adoption and competition."

b. NTIA's Broadband Inventory Map

19. In order to comply with requirements under the BDIA and the ARRA, NTIA in July 2009 established a State Broadband Data and Development Grant Program (SBDD). Through this program, NTIA has awarded grants, funded through 2015, to certain State-designated entities to fund the collection of data from broadband providers. The data collected by NTIA as part of the SBDD program will help populate a national broadband inventory map, which will be made public in February of this year. In accordance with the ARRA, this map will allow consumers to determine broadband "availability" through a Web site that is "interactive and searchable."

3. The Commission's Data Innovation Initiative

20. On June 29, 2010, the Commission launched the Data Innovation Initiative, designed to modernize and streamline how the Commission collects, uses, and disseminates data. As part of the Initiative, the Wireline Competition, Wireless Telecommunications, and Media Bureaus released public notices seeking input on which existing data collections should be eliminated or improved, and which new ones should be added. Review of the resulting record, along with staff work in the three Bureaus, has identified over twenty data collections that may be outdated and ripe for elimination, as well as a number of statutory reporting obligations that may have outlived their usefulness. We will initiate proceedings to consider elimination of those data collections that are completely within our purview. Recognizing that data collection is essential to fulfill the Commission's central statutory obligations, including advancing universal service, protecting consumers, promoting competition, and ensuring public safety, we also look forward to working with Congress to eliminate any outdated statutory reporting obligations that they choose to relieve us of.

4. 2010 Biennial Review

21. The Commission also is conducting its 2010 biennial review of telecommunications regulations, pursuant to Section 11 of the Communications Act of 1934, as amended. This section requires the Commission (1) to review biennially its regulations "that apply to the operations or activities of any provider of telecommunications service," and (2) to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service." The Commission is directed to repeal or modify any regulations that it finds are no longer in the public interest.

III. Purposes for Which the Commission Must Obtain Data

22. The Commission must collect timely and reliable information to carry out its statutory duties. In the eleven years that have passed since the Commission established the Form 477 data program, commenters in a number of proceedings have suggested that the broadband and telephone subscription data we currently collect are insufficient to allow the Commission to fulfill its statutory responsibilities. Telecommunications markets are now in a period of transition to a world in which fixed and mobile broadband networks give consumers access to not only voice communications capability but a myriad of other applications and services. Commission data shows that there are now more than 274 million mobile telephony subscriptions in the United States, and interconnected VoIP subscriptions increased by more than 20% during 2009 while traditional PSTN switched access lines decreased by 6%.

23. The National Broadband Plan recommended that the Commission closely observe this transition from legacy circuit-switched networks to all IP, broadband networks to ensure that legacy regulations and services do not impede the transition to a modern and efficient use of resources, that businesses can plan for and adjust to new standards, and, perhaps most importantly, that consumers do not lose access to statutorily required "adequate facilities at reasonable charges." Commenters in the National Broadband Plan suggested that the Commission collect data, or seek comment on the need to collect data, on a variety of issues related to this transition, including public safety, service quality, customer satisfaction, and price. Below, we identify a number of important purposes for which the Commission and commenters have noted that we may require more robust data, and seek comment on the data needed to fulfill those purposes.

A. Ensuring Universal Service

24. Section 254 of the Act, which governs administration of universal service programs, requires the Commission to base its universal service policies on certain principles, including that "[q]uality services" be "available at just, reasonable, and affordable rates," and that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." A key goal set forth in the National Broadband Plan is to reform the Universal Service Fund (USF) to "accelerate the deployment of broadband to unserved areas," and the Commission's unanimously adopted Joint Statement on Broadband calls for the USF to be reformed "to increase accountability and efficiency, encourage targeted investment in broadband infrastructure, and emphasize the importance of broadband to the future of these programs."

25. We seek comment on the data needed to ensure universal service. Numerous stakeholders have asserted that the Commission must collect deployment, price, and service quality data to effectively fulfill its obligations under Section 254 and to modernize the USF to focus on broadband. For example, Verizon has stated that the

Commission must have reliable data to identify areas that are truly unserved by broadband to implement USF reform. The National Broadband Plan noted that "[a]cross the four USF programs, there is a lack of adequate data to make critical policy decisions regarding how to better utilize funding to promote universal service objectives." The Commission itself has noted the importance of having reliable data to measure the performance of the USF and to protect against waste, fraud, and abuse. Would data on deployment, price, service quality, and subscription be required to assess whether the performance goals proposed for the USF high-cost program and Connect America Fund in the NPRM released today are being achieved? Would voice and broadband pricing data be necessary to develop possible rate benchmarks for voice and/or broadband service in order to determine if services are "affordable" and "reasonably comparable to rates in urban areas"? Would determining whether particular areas of the country—including rural, insular, and high-cost areas—should be exempt from aspects of the USF reform program or afforded different treatment require deployment, subscription, price and service quality data?

B. Ensuring Public Safety

26. The Communications Act charges the Commission with ensuring that "wire and radio communications service with adequate facilities at reasonable charges" are available for the purpose of, inter alia, "promoting safety of life and property through the use of wire and radio communications." Congress has further tasked the Commission with a key role in guaranteeing that Americans have access to emergency services via 911. The Commission must be able to monitor the performance of both legacy circuit-switched networks and broadband networks to ensure that consumers can access emergency services as service providers transition from one technology to the other. As noted in the National Broadband Plan, "[a] more reliable [broadband] network would also benefit homeland security, public safety, businesses and consumers, who are increasingly dependent on their broadband communications, including their mobile phones."

27. We seek comment on what data the Commission needs to fulfill these goals. Would mobile service deployment data, for example, allow the Commission to identify areas where consumers lack access to 911 service, such as rural highways or remote worksites? Would service quality data enable the Commission to identify networks that limit consumers' access to emergency services as a result of excessive downtime? Could customer complaint data likewise serve as an indicator that networks are insufficiently reliable to ensure that consumers can depend on them in an emergency?

C. Promoting Telephone and Broadband Competition

28. Promoting competition is a core purpose of the Telecommunications Act of 1996, as amended, and as the National Broadband Plan noted, "[c]ompetition is crucial for promoting consumer welfare and spurring innovation and investment in broadband access networks," and "provides consumers the benefits of choice, better service and lower prices." Others have noted the importance of competition to consumer welfare. In addition, vibrant competition in a market can reduce or eliminate the need for regulation. For example, competition, properly demonstrated, can be the basis for forbearance from regulations under Section 10 of the Act. As the Commission previously has found in the context of its Section 10 analysis, "competition is the most effective means of ensuring that * * * charges, practices, classifications, and regulations * * * are just and reasonable, and not unjustly or unreasonably discriminatory." The Commission also is required to annually present its findings regarding the state of competition in the mobile services marketplace pursuant to Congress's instruction in Section 332(c)(1)(C) of the Act.

29. Despite the importance of assessing competition in order to fulfill the Commission's statutory responsibilities, the Commission does not always have sufficient information about voice and broadband services sufficient to assess competition accurately. For example, the Commission has recognized that a lack of comprehensive data on telephone and broadband services has, in certain situations, compromised the rigor of its analysis in proceedings seeking the transfer of Title III licenses and Section 214 authorizations. Similarly, in a decision regarding whether to grant forbearance from network unbundling and other regulations pursuant to Section 10 of the Act, the Commission was unable to make a definitive finding regarding market share in the telephony market when the primary cable operator did not voluntarily file reliable data.

30. The National Broadband Plan also noted that statements from a number of commenters—including officials from the Department of Justice and the Federal Trade Commission—demonstrate that "additional data are needed to more rigorously evaluate broadband competition." The Plan concluded that to ensure that the right policies are put in place so that the broadband ecosystem benefits from meaningful competition as it evolves, it is "important to have an ongoing, data-driven evaluation of the state of competition." The National Broadband Plan therefore recommended that the Commission "revise Form 477 to collect data relevant to broadband availability, adoption and competition." Numerous commenters have made similar observations and recommendations.

31. It is important to note that although more robust deployment and subscription data may give the Commission a view of the potential for competition in an area, the National Broadband Plan and a number of commenters have explained that such data alone would not necessarily reveal the actual extent of competition or the level of benefit that consumers enjoy from any competition that exists, and that price and service quality data could fill these gaps. We seek comment on the need for price and service quality data as well as deployment and subscription data to satisfy relevant statutory goals.

D. Promoting Broadband Deployment and Availability

32. As discussed above, Section 706(b) of the Telecommunications Act of 1996, as amended, directs the Commission to annually "initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans" and "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion." The Commission has noted that information about broadband deployment and availability throughout the nation is essential to fulfill its obligations under Section 706, including the requirement to compile information about demographic information for unserved areas.

33. We seek comment on whether the Commission has data sufficient to effectively fulfill this purpose. The Commission has observed that the data it has collected to date have allowed only limited assessments of broadband deployment and availability. For example, the Commission has used information about the existence of at least one subscriber in a ZIP code or census tract as a proxy for both deployment and availability. But the

Commission and commenters have noted that subscription data, particularly when collected above the household level, is an imperfect proxy for network deployment or capability. For example, deployment is overstated when households subscribe in one part of an area (such as a census tract) but service is not offered to households in other parts of the same area, while deployment is understated if no household in an area has chosen to subscribe to any service offering provided by a network, and capability is understated if no household has opted for the highest speed offering.

34. We also note that the Commission has long identified broadband availability as a broader concept than broadband deployment. A number of commenters have suggested that the Commission collect other types of data beyond the Form 477 subscribership data to fulfill its obligations under Section 706, including information on where infrastructure has been deployed, the price of broadband services, and service quality. Would the use of such data sources in conjunction with subscription data provide additional insights into broadband adoption in the United States? If infrastructure data were collected, how could the Commission ensure that sensitive information on critical infrastructure is appropriately shielded and protected?

E. Other Statutory Obligations

35. We seek comment on other statutory obligations and Commission efforts that may require the Commission to reform the 477 data program. In addition, we seek comment on whether the subscription data currently collected via Form 477 and the Commission's other data collection programs are sufficient for such obligations, or whether the Commission should collect additional types of data. Commenters who advocate the collection of additional data should explain how collecting specific types of data would result in concrete benefits for consumers, service providers, and other stakeholders, and explain whether the benefits would outweigh the burdens.

IV. Revisions to the FCC Form 477 Data Program

36. In the preceding section, we discussed specific statutory obligations of the Commission that, to be performed effectively, may require the collection of better data. We turn now to discussion of what specific data may be necessary to discharge these statutory responsibilities, and whether and (where relevant) how we should collect each type of data using Form 477. After reviewing input from outside parties, we believe that there are five categories of data that may be necessary to meet the Congressional mandates described in the prior section: deployment, pricing, and service quality and customer satisfaction data, which provide measures of supply; subscription data, which provides a measure of consumer demand; and ownership and contact information, which serves multiple statutory purposes. While collecting other categories of data, such as the location of last- and middle-mile infrastructure, could prove useful to the Commission, Form 477 may not be the most appropriate tool for collecting such data. We seek comment on whether there are other types of data necessary for the Commission to complete its mandates that should be collected using Form 477.

37. We recognize that data collections place burdens—and potentially significant burdens—on those required to file, and we actively seek to balance the benefits of data collected against those burdens. We seek comment on whether each of the types of data noted below is necessary for the Commission to fulfill its statutory mandates. Those who suggest that the Commission does not need particular data should specify how the Commission can meet its obligations without such data. For data that the Commission should collect, we seek comment on whether the Commission should gather the data through an OMB-approved data collection or whether there are other sources. For example, are there commercial data sources that would allow the Commission to meet its obligations? Alternatively, would it be practical for Commission staff to collect data from public sources (*e.g.,* from service providers' Web sites)? Those advocating the use of commercial or publicly available data should discuss any limitations associated with such sources, the resources the Commission would need to devote to the collection method proposed (*e.g.,* direct costs, staff time), and the impact such a collection method would have on other Commission efforts. Where a data collection is necessary, we seek comment on ways that the Commission can minimize the burden for filers, for example, in the design of the collection or in tools the Commission can provide. Commenters who cite the burden of an OMB-approved collection should quantify the burden they expect and explain their quantification methodology. We seek comment on issues specific to reducing the burden of each collection as they are discussed in the following sections.

A. General Considerations

1. Streamlining Collection

38. To reduce production burdens, commenters urge the Commission to ensure that the FCC Form 477 collection process is as "streamlined as possible," and we agree that streamlining the process where appropriate must be a top priority for the Commission. For example, providers request that the Form 477 interface be redesigned to allow parties to file data on multiple States as a single file. We seek comment on these proposals, and on other steps the Commission can take to streamline the Form 477 data program.

39. Reporting entities already maintain subscriber databases that include address-level information; thus, providing subscribership information at the address level could simplify reporting. At the same time, collection of address-level deployment and availability information would allow the Commission to make policy decisions based on a more granular and accurate understanding of the marketplace. We note that some providers have explicitly requested that they be allowed to submit subscribership data at the address level to reduce their reporting burden. We seek comment whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. We also seek comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

40. In addition, we seek comment on the extent to which technological tools can reduce the burden of producing information. For example, the Commission now makes available a Census Block Conversions application programming interface (API) that returns a U.S. Census Bureau Census Block number given a passed latitude and longitude. The API also returns the State and county name associated with a block. Among other benefits, we expect that this API will assist providers in assigning subscribers to census-defined geographic areas. What other tools are available to reduce the burdens providers face in complying with our data reporting programs? Are there other tools that the Commission itself should develop?

2. Use of Third-Party and Publicly Available Data

41. We seek comment on whether and how the Commission can obtain reliable data from third parties and publicly

available sources. The Commission in 2007 sought comment on the "availability of commercial sources of broadband deployment data or data-processing programs that could augment or otherwise add value to our use of Form 477 data, or reduce the associated costs and other burdens imposed on reporting providers." The Commission declined to use any such sources in the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008. We note that the Commission currently relies on some third-party data that may be considered authoritative, and seek comment on what other data could be obtained by the Commission from third parties. We also seek comment on whether there are new sources of data that could serve Commission goals.

42. We note that there are limitations associated with third-party data sources. Commercial data sources rarely rely on a census of all data sources of a particular type and more often rely on sampling. The bias associated with sampling, or the use of proprietary methods to create or extrapolate from a sample, could limit the applicability of commercial data. Further, commercial data often include restrictions to data rights that could limit the Commission's ability to publish underlying data or resulting analysis. We seek comment on these potential shortcomings of commercial data, whether there are ways to mitigate them, and the balance between these limitations and the burden that could be avoided by the use of commercial data. The Commission could also cull some information from public sources, such as company Web sites. We note that such data may be unreliable or insufficiently detailed, and seek comment on the extent to which the Commission can base policy on such data. To the extent commenters advocate for the use of commercial or third-party data for a specific collection, we ask that they quantify the resources the Commission would have to devote to procure or process those data. How should the Commission balance the costs of purchasing data or collecting data itself from public sources against the burdens that Form 477 data collection may impose on service providers?

3. Who Must Report

43. Four classes of entities currently file FCC Form 477: facilities-based providers of broadband connections to end user locations; providers of wired or fixed wireless local exchange telephone service; providers of interconnected VoIP service; and providers of mobile telephony services. Some entities may fill out only certain portions of the form.

44. Some of the proposals identified below would have the Commission collect from all providers of voice and broadband services data that may have in the past been collected only from a subset of providers. For example, some of the service quality data some have suggested we should collect from all broadband providers formerly were collected only from price cap carriers. We seek comment on whether there are classes of providers that should be exempted from reporting elements of any proposed data collection. For example, small broadband providers may find it relatively more burdensome to comply with certain data reporting obligations than larger carriers. Any proposals to exempt certain providers should include the legal and policy grounds and the policy implications for such an exemption.

45. We also seek comment on whether additional classes of entities should be required to file FCC Form 477. For example, should we revise our definition of "interconnected VoIP" for the purposes of this collection to include services that permit users to receive calls that originate on the public switched telephone network or to terminate calls to the public switched telephone network? Proposals to require additional classes of entities to file should discuss the Commission's authority to do so.

4. Frequency of Reporting

46. The Commission previously has decided that it can best balance its need for timely information with its desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis. One commenter has asked the Commission to require quarterly collections "to keep pace with rapidly evolving Internet technology and allow regulators to plan and adjust policies." Another commenter asks that the Commission synchronize the filing deadlines for FCC Form 477 with those for the NTIA's SBDD. We seek comment on whether FCC Form 477 should be filed more or less frequently.

B. Specific Categories of Data

47. Commenters have identified five categories of data that may help the Commission more effectively carry out its statutory obligations: deployment, price, subscription, service quality and customer satisfaction, and ownership and contact information. We seek comment on whether and how the Commission should collect such data, and the Commission's authority to do so.

48. Those commenting on how to collect data should be as specific as possible. Establishing detailed data reporting requirements is an inherently difficult task. Particular elements of a dataset may be simple to describe conceptually, but difficult to specify as a practical matter. Conversely, a data element may be easily specified, but difficult to explain in plain language. To the extent commenters propose that we collect specific data elements, we ask that commenters both discuss the concept and provide an actual specification of each data element. To the extent particular proposals are offered, are there different data elements that might better achieve our goals, including minimizing production burdens on filers and processing burdens on the Commission?

1. Deployment

49. As discussed above, numerous stakeholders have urged the Commission to obtain data that would allow it to understand where providers have deployed networks capable of delivering a given service. We seek comment on whether deployment data are necessary to fulfill several of the purposes discussed above: ensuring universal service by tracking the expansion of broadband networks, identifying areas that lack access to fixed or mobile broadband and assisting the Commission in targeting support to areas that most need it; monitoring telephone and broadband competition by providing insight into the service areas of potential competitors regardless of the technology used; and promoting broadband deployment and availability by providing reliable information about broadband deployment nationwide. In this section, we seek comment on how the Commission might obtain deployment data for voice and broadband services.

a. Voice Network Deployment

(i) Fixed

50. The Commission currently does not collect data on fixed voice network deployment. And although the national telephone subscription rate has remained high over the last decade, a number of commenters have informed the Commission that residents in some areas of the country—particularly rural, insular, high-cost, and Tribal areas—do not have access to basic fixed telephone service. Other commenters assert that State carrier of last resort obligations are sufficient to ensure that fixed voice networks are ubiquitously deployed. We

seek comment on whether the Commission should collect fixed voice network deployment data. If such a collection is warranted, should it be limited to areas in which network deployment has historically been a concern, such as rural, insular, high-cost, and Tribal areas? What geographic area (*e.g.,* census block or address-level) would be appropriate for reporting such data?

(ii) Mobile

51. The Commission currently licenses a dataset from a commercial source, American Roamer, for data on mobile network deployment. American Roamer provides coverage boundary maps for mobile voice and broadband networks based on information provided to them by mobile wireless network operators. The Commission previously has noted that analysis based on this data "likely overstates the coverage actually experienced by consumers, because American Roamer reports advertised coverage as reported to it by many mobile wireless service providers, each of which uses a different definition of coverage. The data do not expressly account for factors such as signal strength, bit rate, or in-building coverage, and they may convey a false sense of consistency across geographic areas and service providers. Nonetheless, the analysis is useful because it provides a quantitative baseline that can be compared across network types, technologies, and carriers, over time."

52. We seek comment on whether it is appropriate to continue relying on American Roamer's mobile telephony deployment data. Are alternative datasets available, and if so, how do they compare to the data available to and currently purchased by the Commission? Are such datasets available only as off-the-shelf products, or would it be possible to acquire datasets tailored to the Commission's specifications? For such datasets, what are the likely costs, and how timely is the data? Should the Commission require carriers to submit mobile telephony deployment data, notwithstanding the availability of some data from third parties? If so, what data submissions should be required? Should the Commission collect data that are based on a standardized definition of coverage or a range of signal strengths that would reflect a likely consumer experience? We also seek comment on whether the Commission should collect data on the spectrum bands used for mobile voice network deployment in specific geographic areas, which would help the Commission to fulfill its spectrum management responsibilities under Title III of the Act. How burdensome would the collection of mobile telephony deployment data be for providers? What are the benefits of obtaining such information?

b. Broadband Network Deployment

(i) SBDD Data

53. The national broadband inventory map under development by the NTIA is an important step toward collecting more robust data about broadband deployment and availability. The GAO's report noted that stakeholders "generally agreed" that this national broadband map "would address some gaps and provide detailed data on availability, subscribership, and actual delivered speeds," but there were concerns that the data collection mechanism used—which depends on voluntary reporting by providers to State entities whose methods may vary from State to State—could "result in inconsistent data and limit the effectiveness of the effort."

54. Broadband deployment data collected via Form 477 could address these consistency concerns and provide an ongoing source of data at the conclusion of the SBDD program. Verizon, Sprint, T-Mobile, and NCTA suggest that the Commission consider the extent to which it is necessary to collect broadband deployment data through Form 477 once NTIA's national broadband inventory map is online and the data become available to the Commission. We seek comment on this suggestion. On what data would the Commission rely at the conclusion of the SBDD program, and how would the Commission reliably analyze trends in broadband deployment if there are gaps in data collected by the SBDD program?

(ii) Data Collection by the Commission

55. We seek comment on a number of issues raised by commenters who recommend that the Commission collect data on broadband network deployment.

56. *Geographic Area.* Parties have proposed varying levels of geographic specificity the Commission should require when collecting deployment information. Currently, the Commission collects subscription data—which it uses as a proxy for deployment—for fixed broadband providers at the census tract level. In the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, the Commission tentatively concluded that it should measure deployment on an address-by-address basis, which would provide the most granular and accurate information. A number of commenters in prior proceedings, particularly State regulatory agencies, have expressed support for collection of broadband deployment data at the address level. These commenters note that address-by-address data would yield the most useful data for the Commission about where broadband is deployed. Some smaller providers also state that reporting at the subscriber address level would ease the burden of reporting. Other commenters, however, have suggested that reporting address-level deployment information would be unduly burdensome for providers, particularly for small- and medium-sized providers that do not maintain such data. We seek comment on the benefits and burdens of requiring address-level deployment data. In addition, we seek comment on how to account for areas where networks are deployed, but there are no homes or businesses with addresses (*e.g.,* uninhabited highways with mobile network coverage). At least one State (California) already requires address-level reporting for the construction of its broadband map. We seek comment on this and similar State agency initiatives and request any empirical evidence of the burdens and impact of compliance.

57. Some commenters in prior proceedings have suggested that the Commission collect deployment data at the census block level. The California Public Utility Commission (PUC) notes that reporting by census block would yield an average of 22 households, whereas a census tract yields an average of 1,628 households. Census block-level reporting could provide a balance between being more granular than census tract-level reporting and avoiding any privacy issues associated with address-by-address reporting. Commenters have also noted that the utilization of a Census geography facilitates the application and analysis of Census demographic data, such as income, race, age, and household size and composition. We seek comment on whether the burdens imposed by collecting census block-level data are significantly greater than those associated with collecting census tract-level data. Would the burdens imposed by collecting census block-level data be substantially greater than requiring address-level reporting? Are there particular benefits to using census-block level reporting? What were the costs and benefits of initiatives that have used census block-level reporting? What alternative reporting methods could the Commission use to ease the burden on carriers that might find census block-level data to be unduly burdensome,

while still collecting comparable and useful data?

58. NTIA's broadband mapping effort sought deployment data for a smaller geographic area than a census block for census blocks larger than two square miles. We seek comment on the benefits and costs of this approach. What unit of measurement should the Commission utilize for larger census blocks if the Commission does not use address-by-address reporting?

59. *Speed.* The National Broadband Plan noted the importance of speed data to consumers and policymakers, and stakeholders generally acknowledge its usefulness. The Commission currently collects information about advertised broadband speeds in its Form 477 collection. The National Broadband Plan noted, however, that consumers and policymakers would benefit from data on actual speeds. The Commission has sought information about how best to measure actual broadband speeds. Recognizing the difficulty of measuring actual speeds, a number of stakeholders have nonetheless urged the Commission to require providers to report actual speeds. Some have suggested that the Commission require providers to report a statistical sampling of average speeds. Others have suggested requiring providers to report data contention ratios (the ratio of the potential maximum demand to the actual bandwidth available). Broadband providers and their industry associations have argued that actual speeds are affected by a wide variety of factors, many beyond the providers' control, and that measuring speed will be "almost impossible." We seek comment on whether the Commission should collect data on contention ratios or some other measure of network congestion. We further seek comment on whether the Commission should continue to collect data only on advertised speeds, or whether, for example, providers should provide information about actual speeds by geographic area, or speeds that extend beyond the access network (*e.g.,* end-to-end speeds that reflect an end user's typical Internet performance). We also seek comment on how to best measure the actual speeds of services that can be provided over a network. The Commission has undertaken a program to measure such speeds directly for a sample of end users of fixed broadband, and is considering a similar program for mobile broadband. We seek comment on whether an approach like this one, a similar approach with more measurements, or some other method is appropriate. Comments on measurements of actual speed should identify the part or parts of the network where speed should be measured. What starting and ending points are most relevant for consumers, providers, and the Commission?

60. The Commission currently collects speed data in eight tiers of advertised download speeds and nine tiers of advertised upload speeds, leading to 72 possible combinations. The SBDD established nine tiers of advertised download speeds and 11 tiers of advertised upload speeds, for 99 possible combinations. We seek comment on whether the FCC and NTIA should conform their speed tiers. Further, while there is value in having speed data broken out at a granular level, relevant speeds are likely to evolve over time, and having 72 or 99 speed-tier combinations may be unnecessarily complex. However, we note that there are benefits to maintaining some continuity in this area to enable tracking data on particular speed-tier combinations over time. Further, measuring the same speed tiers for both business and residential customers may not be appropriate, as they often have different needs for speed. When collecting speed data, should the Commission reduce the number of speed tiers reported by providers? Should we add a tier specifically tied to any speed benchmark that may be required to receive USF or Connect America Fund (CAF) funding? Should any future increase in that potential benchmark result in the addition of a speed tier for that new speed? An alternative approach would be to define tiers by pairs of upstream and downstream speeds. Such an approach would greatly reduce the number of tiers but would lock-in pairings of downstream and upstream speeds. We seek comment on these approaches, including comment on the number of speed tiers and breakpoints.

61. *Mobile Issues.* Mobile broadband presents additional challenges with respect to geography. We seek comment on whether a mobile service should be treated differently from a fixed service for reporting purposes. For mobile service, a billing address can provide a subscriber's home location but does not reflect the entire coverage area where a mobile broadband network is available; nor would a billing address necessarily be reflective of the primary usage area of the subscriber, particularly in the case of family plans and for businesses. As discussed above, American Roamer produces mobile voice and broadband coverage maps, which the Commission has used to estimate mobile broadband deployment at the census block level. However, these coverage maps have certain drawbacks, including that the data do not account for factors such as signal strength variations. Should the Commission collect some measure of signal strength beyond a simple "signal/no signal" flag? For example, would a "good/better/best" measure for each geographic area be appropriate, or would reported advertised speeds accurately reflect the impact of signal strength? How should reporting account for the variability of signal strength and capacity in a network that includes mobile users? We seek comment on whether billing address, census blocks, or another geographic area should be used to collect data on mobile broadband network coverage areas, separate from the maps obtained from American Roamer. In addition, Sprint has stated it has maps that would allow for the identification of service availability at the street address level, and has suggested that the Commission request such data on a trial basis from providers that currently produce such maps. We seek comment on conducting such a trial.

62. One carrier argues that mobile wireless providers should not be required to report speed data because of the difficulty of measuring factors that can affect mobile data transfer rates. We seek comment on whether we should collect data on mobile connection speed, and whether fixed and mobile services should be treated differently when reporting speed data. In addition we seek comment on the extent to which data from the Commission's mobile broadband speed test could be meaningful in evaluating mobile data transfer rates.

63. *Spectrum Issues.* We seek comment throughout this NPRM on several issues concerning spectrum usage data, which would help the Commission to fulfill its spectrum management responsibilities under Title III of the Act. How can the Commission best collect such information? Possible methods include requiring providers to indicate the band, radio service code, or call sign used to provide service.

64. *Satellite Issues.* We seek comment on how best to collect deployment data about satellite-based services. At least one satellite provider has pointed out the near-ubiquity of satellite signals. Should the Commission exempt satellite broadband providers from reporting deployment information, or require only that satellite providers report areas where terrain or other impediments are likely to block line of sight to the satellite?

65. *Anchor Institutions.* Anchor institutions such as schools, libraries, or

hospitals often require broadband offerings with quality of service guarantees not required by at least some retail customers, and Section 254 of the Act places particular emphasis on educational providers, libraries, and health care providers for rural areas. We seek comment on whether to treat anchor institutions like other businesses or whether they should be treated as a different category for the purposes of measuring deployment.

2. Price

66. We seek comment on whether price data are necessary to fulfill several of the purposes discussed above, including ensuring universal service by determining whether rural consumers are paying affordable and reasonably comparable rates to those in urban areas; monitoring telephone and broadband competition (*e.g.,* in forbearance proceedings) by providing data regarding the effect, if any, of competition on pricing or by determining whether nominally competitive providers in fact have comparable offerings in the market; reporting a comparison of U.S. and international prices for broadband service capability; and promoting broadband deployment and availability.

67. The Commission previously has considered whether to use Form 477 to collect price information. In the 1999 First Section 706 Report, for example, the Commission sought suggestions on how to measure market demand through "indicia [such] as prices [and] willingness to pay." In the 2008 Broadband Data Gathering Order and Further NPRM, 73 FR 37911, July 2, 2008, the Commission sought comment on whether to require providers to report the monthly price charged for stand-alone broadband service.

68. Some commenters have argued that broadband providers should not be required to submit price information because prices are competitive; bundled offerings, temporary discounts, different pricing plans, and other service attributes make comparing pricing complex; the production of pricing data is too burdensome; and requiring the production of price data would impose Title II burdens on broadband providers.

69. Others, however, have urged the Commission to require broadband and voice providers to report price information to assess competition, determine whether prices are reasonably comparable in different demographic areas, inform our USF distribution mechanism, and to assess why consumers may not be purchasing broadband where it is available. Such commenters have emphasized the need for the Commission to collect the actual price of broadband services to, for example, allow consumers to compare service prices. Proposals on how to collect price data have varied widely, however, in substance and level of detail. For example, some State regulators have urged the Commission to collect price information for stand-alone and bundled services, and not to consider promotional prices or short term deals. Some have urged the Commission to collect a measure of "price per megabit per second." Others have urged the Commission to collect "information from commercial carriers regarding their tier pricing, credit and deposit requirements across various communities." Commenters also have proposed a variety of geographic areas for reporting price, and a variety of reporting periods.

70. We seek comment on the Commission's legal authority to collect price data, whether we should use Form 477 to collect price data, and if so, how we should collect and analyze such data. We acknowledge that there are a number of challenges associated with any approach to collecting price information. We therefore seek detailed comment on the strengths and weaknesses of the approaches we describe below, and on other possible approaches.

71. Price data can be collected in many different ways. For example, the Commission could collect retail prices charged by providers for basic voice and broadband offerings. Given the complexity and variety of bundles and discounts, the Commission could instead define a basket of services and collect, or require providers to post publicly, the price of that basket. Alternatively, the Commission could collect information about all available prices and packages, or seek to determine effective prices that end users pay.

72. Another approach would be to have providers report the total revenue associated with all offerings (including voice, video (*i.e.,* pay television), and broadband Internet access services), and identify the attributes associated with that revenue, such as the types of services provided (*e.g.,* voice, video, and broadband) and key descriptors of those services (*e.g.,* basic video, extended video, very high speed Internet access). The Commission could then determine the average effective price for each attribute in a given area by performing statistical analysis on aggregate revenue and attribute data across areas large enough to generate a significant number of measurements. We seek comment on whether such an approach would yield meaningful results for the purposes outlined above. We also seek comment on how this approach might be specified. For example, how many and what attributes would be needed to support a useful analysis? Given that resolving the price for more attributes will require more measurements of total revenue, how should the number and selection of attributes be balanced against the geographic size of the measurement, given that a sufficiently large sample size for a larger number of attributes will require more measurements and a larger geographic area? Should revenue be inclusive or exclusive of taxes and fees? Should revenue be reported separately for business and residential customers?

73. We note that the Commission has sought comment on the need for price data to set benchmarks in the context of our intercarrier compensation and universal service proceedings. Would any of these approaches provide data suitable for the establishment of such benchmarks, or are more appropriate data available from other sources?

74. If the Commission collects price data, over what geographic area should prices be collected? As discussed in Section V.C below, ECPA may limit the Commission's ability to require providers to report price data from service providers at the household or address level. Should the Commission collect price data at the census block level? Could the Commission collect data using, for example, street segments as the collection geographic area? If so, would it need to guard against collecting single home street segments? How could it do so? What impact would different geographic-level collections have on the value of the data produced? Would collecting data at a more granular level that is consistent with the restrictions imposed by ECPA (*e.g.,* at the street-segment level) materially improve the quality of the analysis and justify the added complexity of the collection?

75. Were we to collect pricing data for mobile services, how should prices for mobile services be assigned to a geographic area? Assigning a fixed service subscriber to a single census block is a relatively simple process that providers currently use to provide subscribership data at the census-tract level. Assigning price data for mobile services to a geographic area, however, is less straightforward, particularly in light of the billing address issues related to mobile addressed above. Should providers of mobile services use the billing address as the customer's location, and report data for that customer in the corresponding census

block? For those that suggest mobile services do not have any inherent location, how should the Commission evaluate substitution of fixed service by mobile? How should the Commission account for various types of pre-paid and family plans that are common in mobile services?

76. The impact of a given price will be very different for consumers, businesses, and anchor institutions. The impact of those prices could vary significantly within those groups as well. For example, schools and libraries may seek a broadband service similar to a community hospital, but may have less funding. Should the Commission specify narrower customer classes (*e.g.,* small, medium, and large business) when collecting price data? How would any such customer classes be defined?

3. Subscription

77. We seek comment on whether subscription data, which the Commission currently collects, are necessary to fulfill several of the purposes discussed above: monitoring telephone and broadband competition by providing a measure of competition's outcome: how many customers subscribe to different providers' services in each area; promoting broadband deployment and availability; ensuring public safety by providing a measure of what networks and providers are relied on by how many customers in each area; monitoring the effects of PSTN-to-IP conversion by providing insight into how many customers are reliant on each type of network technology in each area; and ensuring that affordable voice and broadband services are available to all Americans.

78. No commenter has asked the Commission to cease collecting subscription data for wireline services. Are there types of subscription data the Commission need not continue to collect? For example, should the Commission continue to require providers to report the percentage of their local exchange telephone service lines for which they are the presubscribed interstate long distance carrier or that are provided over UNE–Platform? One provider has urged the Commission to cease collecting subscription data from wireless service providers, and instead to "seek broadband and telephony data based on coverage areas" like those provided by American Roamer, because coverage areas more accurately indicate where mobile subscribers have access to wireless service than do subscriber billing addresses or area codes. We seek comment on this proposal. Would data collected by coverage area be sufficient to achieve the outcomes discussed in Section III above?

a. Issues Applicable to Both Voice and Broadband Subscription

79. *Mobile issues.* Should the Commission modify its data collection practices with respect to mobile voice or mobile broadband subscribers? For example, if most providers treat each line, telephone number, or device as a separate subscription, to what extent does over-counting result from individuals owning or using more than one device? We also ask that providers comment on the way in which family plans are counted. Is one family plan a subscription, or is each line within the plan counted as a separate subscriber? In addition, certain challenges can arise in collecting data on prepaid subscribers, particularly subscribers to traditional pay-as-you-go prepaid plans. For instance, the address or location of such subscribers is typically unknown, and these subscribers may frequently stop using one device and start using another without the first device being counted as a disconnect. We seek comment on the best way to account for pre-paid plan subscribers given these challenges. In addition, should we collect data on the number of mobile voice and mobile broadband subscriptions by spectrum band, by customer class (*i.e.,* residential and business), and by technology? Should we require that mobile voice and mobile broadband providers distinguish which subscribers are voice-only, broadband-only, or both voice and broadband? How should we account for mobile data services for non-traditional devices, such as data-only e-readers, machine-to-machine communications, telemetry systems, and others? Are there other ways for the Commission to access this information? How would any proposed changes help us to produce our annual report on mobile wireless competition?

80. *Geographic Area.* Form 477 currently collects voice telephony subscription data at the State level and broadband subscription data at the census tract level. We seek comment on whether voice and broadband subscription data should be collected at the same level of geographic specificity. Are there differences in the need for such data that would justify continuing to use different levels of specificity? We also seek comment on whether the Commission should require entities to report deployment and subscription levels at the same level of geographic specificity.

81. As discussed above, commenters in prior proceedings have advocated more granular subscribership data for broadband services. Commenters have also suggested that policymakers need more granular data about voice services, particularly in order to address competition issues. Should voice and broadband subscription data be reported at the address level, the census block level or some other level? Is it important for voice and broadband subscription data to be reported at the same geographic level, regardless of which one? As discussed below, the Electronic Communications Privacy Act may be implicated should the Commission collect address-level subscription data from service providers. However, some smaller providers have specifically requested that the Commission allow them to provide address-level data because that "would reduce reporting burdens on small businesses serving high-cost rural areas." Therefore, we seek comment on the propriety of allowing production of such data at the request of a provider, the benefits and drawbacks to having some, but not all subscribership data at that level of granularity, and whether such collections would violate ECPA.

82. Data on mobile wireless broadband subscribers are currently collected at the State level, while mobile broadband availability is reported at the census tract level. We seek comment on whether we should treat fixed and mobile services differently. How should we account for users of resold or prepaid mobile broadband services, where the address of the end user may be unknown?

83. *Residential and Business Subscription Breakdown.* Form 477 currently requires that providers report subscriptions separately for residential and business customers. We recognize that this distinction may be imprecise, particularly for mobile plans where lines used primarily for business may be paid for by an individual, or vice versa. We seek comment on whether there are better ways to distinguish residential and business customer classes, for data and voice services. For example, should we require providers to treat all fixed broadband connections with a service-level agreement as "business" and all those without one as "residential?"

b. Voice Subscription Data

84. To the extent the Commission continues to collect subscription data, we seek comment on whether we should modify the way in which we collect that data.

85. *Fixed.* Should the Commission modify its data collection practices with respect to fixed voice services? For example, should the Commission distinguish among services sold as

stand-alone offerings and services that are bundled with a subscription to broadband, video, or mobile services? The Commission currently collects data on the proportion of subscribers that have the filing carrier as their presubscribed interexchange carrier (PIC). Should the Commission collect information on what type of interexchange service plans these subscribers purchase (*e.g.,* per minute, bundles of minutes, or unlimited local and long distance)?

86. Form 477 currently collects limited data on the extent of facilities-based competition for fixed voice services. Should the Commission distinguish among the types of loops provided under unbundled network element (UNE) arrangements? For example, should the Commission collect data on the number of DS0, DS1, and DS3 loops provided to unaffiliated telecommunications carriers under a UNE loop arrangement? The Commission does not currently collect information for voice services that are provided using special access or other high capacity services/facilities that have not been channelized. Should the Commission collect information on voice services provided in this manner?

87. *Interconnected VoIP.* Should the Commission modify its requirements concerning interconnected VoIP? For example, should the Commission distinguish among stand-alone, facilities-based interconnected VoIP; stand-alone over-the-top interconnected VoIP; and interconnected VoIP that is bundled with a broadband subscription? Should Form 477 distinguish "nomadic" from "fixed" interconnected VoIP (*i.e.,* distinguish whether an interconnected VoIP service can be used from one or multiple fixed locations)? Should the Commission begin collecting data on VoIP services that do not meet the definition of interconnected VoIP (*e.g.,* services that can make calls to or receive calls from the PSTN)?

c. Broadband Subscription Data

88. Currently, Form 477 collects data on broadband subscribership at 72 speed tiers for each census tract in the nation. As with deployment data, we seek comment on whether we should reduce the number of speed tiers at which providers report. Should the speed tiers used for deployment and subscription data be the same? Should providers of fixed and mobile broadband services provide the number of subscribers by technology? We also seek comment on whether wireless broadband providers should include information about the spectrum band(s) they use to provide service.

4. Service Quality and Customer Satisfaction

89. We seek comment on whether service quality and customer satisfaction data are necessary to fulfill several of the purposes discussed above: reducing waste, fraud, and abuse and increasing accountability in our universal service programs by ensuring that recipients of government support provide services to their customers that are reliable and of comparable quality to those not provided with government support; ensuring public safety by ensuring that networks remain a reliable means of contacting public safety organizations; monitoring telephone and broadband competition by ensuring that service providers with overlapping footprints provide comparable levels of service; promoting broadband deployment and availability; protecting consumers by ensuring that end users have information about network performance; and tracking the effects of the conversion from PSTN to IP services by providing insight into the performance levels of both networks.

a. Issues Applicable to Both Voice and Broadband

90. *Who Should Report.* The Commission previously has collected voice service quality and customer satisfaction data from a small subset of the total number of carriers. We seek comment on whether and how such data should be collected from a larger universe of voice and broadband providers.

91. *What Data Should Be Collected.* If we do collect such data, we seek comment on what aspects of service quality and customer satisfaction are relevant to the purposes described above or otherwise identified by commenters. The Commission could collect, for example, data regarding the number of trouble reports or complaints that customers make regarding network performance or degradation; complaints regarding service provider customer care and billing; installation and repair intervals; and general customer satisfaction. The Commission has conducted surveys that include questions on customer satisfaction. To what extent could data from these surveys and others like it be used to address concerns about service quality, particularly with respect to individual carriers in particular geographic areas? In addition, the Commission could collect direct measures of network performance, such as network downtime and number of customers affected; call blocking; prevalence of dropped calls; and speed, latency, and jitter.

92. To what extent should the Commission specify common metrics for voice and broadband services. For example, should the Commission collect data on gross churn as a measure of customer dissatisfaction? Should the Commission collect data from all providers on the number of complaints made to providers and to State public utility commissions? Should data for residential customers include the time interval for installation and service commitments, the percent of time those commitments are met, and the out-of-service repair interval? How could the Commission ensure that such metrics were comparable for all reporting entities?

93. *Geographic Area.* We seek comment on over what geographic areas would be appropriate to collect service quality and customer satisfaction data. Given the role States play in regulating some voice services, we seek comment on whether collecting data by provider by State is appropriate. However, some provider networks may cross State boundaries, suggesting that market- or carrier-level information would be more appropriate. It may also be the case that different aspects of the proposed service quality collection will be most meaningful when measured in different geographic areas (*e.g.,* wireline voice by State; but cable information by system), which suggests that the collection should be made over a smaller geographic area to allow for different levels of aggregation. To the extent commenters suggest the Commission collect data, we ask that they specify the appropriate geographic area for these data, and the relative burden that reporting for different geographic areas might impose.

b. Voice

94. The Commission in 1990 established ARMIS Reports 43–05 and 43–06 in order to monitor whether the implementation of price caps would lead to carriers lowering service quality. In 2008, the Commission granted certain incumbent LECs conditional forbearance from "the current partial and uneven" collection of those reports. The Commission noted, however, "the possibility that service quality and customer satisfaction data * * * might be useful to consumers to help them make informed choices in a competitive market, but only if available from the entire relevant industry," and tentatively concluded that the Commission should collect this type of information from "facilities-based providers of broadband and/or telecommunications." Some urge

the Commission to adopt this tentative conclusion, while others object, arguing that forbearance was justified and the metrics set forth in those reports are irrelevant and outdated.

95. CWA proposes that the Commission require all providers of voice telecommunications services to file all of the data previously submitted on ARMIS Reports 43–05 and 43–06, and to expand service quality measurements to include answer times for live representatives responding to customer inquiries. We note, however, that all parts of the ARMIS 43–05 and 43–06 collections may not be helpful to fulfillment of the policy objectives discussed in Section III. For example, the California PUC offers a more limited proposal, that the Commission collect data formerly reported on four of the six tables of ARMIS Report 43–05.

96. We seek comment on whether the Commission should use Form 477 to collect service quality and customer satisfaction data for voice networks. Should the Commission collect some or all of the service quality metrics formerly collected through ARMIS, or other measures of voice quality? Should we collect metrics from switched and interconnected VoIP providers, over both fixed and mobile networks? Are there other metrics for service quality and customer satisfaction that would be more appropriate and less burdensome for reporting entities? Should metrics vary depending on the technology over which service is provided?

c. Broadband

97. Several commenters have suggested that the Commission collect service quality and customer service data from broadband providers. In contrast, most broadband providers that commented objected to adopting any service quality data requirements. We seek comment on whether Form 477 should be revised to collect service quality and customer satisfaction data from broadband providers, and the authority under which such a collection would be conducted.

98. The metrics set forth in ARMIS Reports 43–05 and 43–06 were not designed with broadband networks in mind, and therefore might not be the best tools for collecting relevant data. To the extent that the Commission decides to extend customer service measurement to broadband services, we seek comment on what metrics should be used to assess broadband network service quality and customer satisfaction. How would the Commission measure network downtime? Should downtime reports include specific locations of outages and the number of customer-hours relating to the outage? Should the Commission collect packet loss, latency, and jitter data? How can it do so in a meaningful way; and over what geographic area would such a collection have meaning? Should the Commission collect data on mobile and fixed traffic volume and network congestion, and if so, how should those metrics be specified? Over what geographic area is such a collection meaningful, and what measure of traffic is most meaningful?

99. We note that the recently adopted Open Internet Order requires broadband providers to publicly disclose the network management practices and performance characteristics of their broadband Internet access services. Are these disclosures adequate to satisfy any need the Commission may have for service quality data? If Form 477 were used to collect information regarding network management practices or performance characteristics, would the benefits outweigh the burdens?

5. Ownership and Contact Information

100. We seek comment on whether ownership and contact information are necessary to fulfill one or more of the purposes discussed above, including reducing waste, fraud, and abuse and increasing accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient regardless of corporate structure; ensuring public safety by providing a means for Commission staff to contact network operations centers rapidly in the event of an emergency; and monitoring telephone and broadband competition by revealing whether service providers with overlapping service footprints are in fact under common ownership or control.

101. Currently, we permit Form 477 filers to consolidate data for multiple operations within a State on a single submission. We also permit filers to determine the organizational level at which they submit their filings. For example, a parent or holding company may file on behalf of its subsidiaries or the subsidiaries may file their own Form 477. This provides filers with significant flexibility in how they submit data on Form 477, but may not provide the Commission with a sufficiently detailed picture of the markets for which data are reported.

102. We seek comment on whether we should revise the Form 477 to collect additional ownership information and related data. Would additional ownership information help inform the Commission's overall understanding of the broadband ecosystem? In particular, would additional or different ownership data help us understand the interrelationships among the data on services and thereby improve our ability to evaluate markets and report to the public? Given the importance of broadband competition, would the benefit to the Commission of understanding the relationships between companies that appear to be providing competitive services in a particular area outweigh any burden of producing such information?

103. We also seek comment on the most effective and least burdensome means of collecting additional ownership data. One option could be to require filers to report data such as that collected on FCC Form 602 for wireless carriers, which collects all of a filer's "disclosable interest holders." Would such an approach be necessary to enable us to evaluate ultimate ownership of, and common control among, filers, or would a more limited dataset be sufficient? Should we require the submission of data on any branding used in the marketing or provision of service? If we require the submission of additional ownership information, should we also collect other reporting identifiers the filers use in making submissions to the Commission, such as the Physical System ID (PSID) used by the Media Bureau for cable systems? These and other measures might allow the Commission more easily to evaluate the actual number of providers offering services in a given area and to report non-confidential information about carriers by the names by which most consumers know them. Are there are ancillary data that would be helpful to include on consumer-facing resources, such as the national broadband inventory map? Would it be useful, for example, to make available a provider's Web site address and other non-confidential data? Should entities that file report their FCC Registration Number (FRN) and Universal Service Administrative Company Study Area Code (SAC)?

104. We also seek comment on revising Form 477 to collect contact information for use in emergency situations. The Commission maintains a voluntary reporting system, the Disaster Information Reporting System (DIRS) that facilitates contact with carriers in emergencies. The Commission also maintains a number of databases that include contact information for other purposes. There is, however, no structured, mandatory collection of contact information in place specifically for use in emergencies affecting telephone or broadband networks. As a

mandatory, recurring filing by providers of telephone and broadband service, Form 477 may be a particularly effective vehicle for collecting emergency-contacts data that are comprehensive and current, with a relatively small burden on filers. We seek comment on whether we should revise Form 477 to collect data of this type and, if so, what data would best facilitate emergency communications with providers. Would a telephone number and e-mail address for each provider's Network Operations Center or equivalent be sufficient? Would the current six-month cycle for filing Form 477 be frequent enough to ensure that information was current? Are there any additional steps the Commission should take to collect data of this type?

6. Other Data

105. Stakeholders have periodically suggested that the Commission collect other types of data via Form 477. MMTC, for example, suggests that the Commission collect via Form 477 "socioeconomic data," "social metrics," data to assess socially and economically disadvantaged businesses and minority or woman-owned business entities, and data on hardware and software availability in underserved areas. What other data should the Commission collect via Form 477 in support of the purposes identified in Section III above? Commenters should explain the purpose for which the Commission would collect such data, the legal authority for the collection, and the extent to which the benefits outweigh the burdens of collecting it.

106. We also note that there are some alternate geographic areas relevant to Commission analysis that cannot be re-created by aggregating even the smallest census geographies. Such alternate areas include, for example, wire centers or study areas. Information about what alternate areas are associated with each reported geography (*i.e.,* the geography reported with one or more of the possible collections described above) would assist in any analysis related to those areas. We seek comment on the burden to provide information about these alternate geographic areas on those reporting data.

V. Legal Issues

A. Authority

107. The Commission has previously noted it must collect data on the provision of voice and broadband services to fulfill numerous statutory obligations. For example, the Telecommunications Act of 1996 required the Commission to open all telecommunications markets to competition, and to assess the availability of broadband services. The Form 477 program collects data that are "a critical precursor" to the Commission's ability to fulfill these directives. Form 477 also enables us to fulfill our obligation to reduce government regulation wherever possible, by providing "a factual basis to evaluate the nature and impact of our existing regulation and, in particular, to identify areas where competition has developed sufficiently to justify deregulation." Many other statutory obligations cannot be implemented without the collection of data about the deployment and adoption of communications technologies and the state of relevant marketplaces. For example, the BDIA requires the Commission to collect comparative data reflecting the extent of broadband service capability in other countries, and data for the United States, to inform its annual consideration of whether broadband is being deployed to all Americans on a reasonable and timely basis. We believe our authority to collect the proposed additional data derives from these statutory obligations, as well as additional grants of authority in the Act, including those in Sections 4(i), 4(k), 218 and 403. We invite comment on this conclusion.

B. Disclosure

108. The Commission has always recognized that the Form 477 broadband and local telephone service data it collects can be of significant value not only to the Commission, but also to the States and to the public. In establishing and administering the Form 477 collection, however, the Commission has also been cognizant of the potential sensitivity of the data collected and has limited their disclosure.

109. We note that the Commission is reviewing its data dissemination practices in connection with the Data Innovation Initiative. How can we best provide stakeholders with useful data while protecting filers' legitimate confidentiality interests? Should the Commission retain the simple check box on the FCC Form 477 that filers can use to request confidential treatment for all data submitted on that form? Are there classes of information that should always be considered public, and, therefore, not be granted confidential treatment? For example, given that SBDD data will be public, are there any reasons to accord confidential treatment to deployment data collected by the Commission? Are there circumstances where data submitted to the Commission should be held confidential, but aggregations of those data be made public, as is currently the case with subscription information? Once deemed confidential, should data always be confidential, or does the passage of time diminish the commercial sensitivity of certain types of data? When data are given confidential treatment, should the Commission establish a program to allow researchers access to those data under certain conditions? How would such a program be administered?

C. Privacy

110. We seek comment on any privacy concerns that may arise from the reporting of address-level data. We note that the privacy-based limitations on the government's access to customer information in Title II of ECPA, and the privacy provisions of the Cable Act, may be implicated by collection of address-level subscribership data. We therefore seek comment on ways the Commission could alleviate any privacy concerns while complying with all applicable laws.

111. We also seek comment on whether the Commission could establish a registry or database through which consumers could themselves share data with the Commission or choose to have their providers share data with the Commission. What would be the benefits and drawbacks of such a registry, and how could it be set up both to get useful data and to minimize the burden on consumers and reporting entities? Should consumers provide information directly to the Commission, or through reporting entities that must gain consumer consent? If the latter, what steps could the Commission take to ensure that consumers have provided consent? How could the Commission address any other privacy issues, and any other legal impediments to the creation and maintenance of such a registry?

112. We note that the presence or absence of a network at a particular address does not provide any subscriber-specific information. We seek comment, however, on whether any privacy concerns would arise if providers were required to report deployment data at the address level.

VI. Other Issues

A. Tribal Lands

113. The National Broadband Plan identifies the importance of improving data on Tribal lands, and recommends that the Commission "identify methods for collecting and reporting broadband information that is specific to Tribal lands, working with Tribes to ensure

that any information collected is accurate and useful." The Commission's rules identify Federally recognized Tribal lands and define them for particular purposes, such as the eligibility and delivery requirements for universal service support programs. The Commission's definition of Tribal lands identifies the boundaries of land holdings of Federally recognized American Indian Tribal and Alaska Native Village government entities. We acknowledge that American Indian and Alaska Native areas defined as "Native Home Lands" by the U.S. Census Bureau for census taking purposes encompass areas both within and beyond areas defined as Tribal Lands in the Commission's rules. Tribal leaders have asked that we consider disaggregating our analysis of the Census Bureau's "Native Home Land" areas, in part to allow for a more accurate assessment of broadband deployment in the Tribal Lands areas defined under the Commission's rules. In the Seventh Broadband Deployment NOI, we sought comment on how to more accurately report data concerning the lands of Federally recognized American Indians Tribes and Alaska Native Villages, as well as Native Hawaiian Home Lands. Native Hawaiian Home Lands may also be able to be more accurately analyzed, as they are located exclusively within the State of Hawaii.

114. We seek comment on our analysis of broadband deployment and availability on Federally recognized Tribal lands and how we could improve and refine this analysis. We also seek comment on analysis of broadband deployment and availability on Native Hawaiian Home Lands. We note that sources of such data may presently exist within the U.S. Department of Commerce, U.S. Department of the Interior, and from Tribal Government entities. We seek comment on whether there are other sources of data that would help the Commission better understand and analyze the nature of broadband deployment and availability on Tribal Lands and Native Hawaiian Home Lands.

B. International Data

115. As discussed above, the BDIA requires the Commission to include an international comparison in its annual broadband deployment report. The International Bureau has released its first International Broadband Data Report, which presented data and information on international broadband service capability, advertised prices or broadband services, community-level data, and information about the broadband market and broadband regulations in various nations.

116. To conduct a rigorous comparison of the factors that affect broadband deployment in the U.S. and abroad, it is necessary to have comparable, detailed, and geographically disaggregated data. We therefore seek comment on how and whether revisions to the Form 477 program would facilitate comparing the U.S. broadband market to other countries. To what extent would revisions facilitate comparisons between the U.S. and other countries on the basis of a population's income (and variations in income), education (and variations in education), computer literacy, residential computer ownership, household size, and other factors? Should the Form 477 program be modified to collect data on the costs of deploying broadband, including as a function of population density at a geographically disaggregated level? Should the program be modified to collect data on alternative broadband technologies more prevalent in other countries? Should the program allow for or enable an assessment of the number of providers that offer alternative forms of broadband and the advertised and actual speeds that providers offer in local geographic areas? Are there modifications to the subscription data we currently collect that would make those data more suitable for international comparisons? Where U.S. providers offer multiple service packages, should the Commission collect data about the speeds and other service characteristics of these packages? Would information on actual data usage be useful, as well as data on the applications that residential consumers use, such as VoIP services? Finally, would the collection of pricing data facilitate comparisons with offerings in other countries?

VII. Procedural Matters

A. Ex Parte Presentations

117. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

118. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments regarding the NPRM on or before the dates indicated on the first page of this document. All filings should refer to WC Docket No. 10–191. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's e-Rulemaking Portal; or (3) by filing paper copies.

119. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs/* or the Federal e-Rulemaking Portal: *http://www.regulations.gov*.

120. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

121. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

122. Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

123. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

124. For further information about this rulemaking proceeding, please contact Jeremy Miller, Industry Analysis and Technology Division, Wireline Competition Bureau at (202) 418–0940.

125. Documents in WC Docket No. 11–10 will be available for public

inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

VIII. Ordering Clauses

126. Accordingly, *it is ordered* that, pursuant to Sections 1–5, 10, 11, 201–205, 211, 214, 215, 218–220, 251–271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 161, 201–205, 211, 214, 215, 218–220, 251–271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and Section 102 of the Broadband Data Improvement Act, 47 U.S.C. 1303, this Notice, with all attachments, *is adopted.*

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

Initial Regulatory Flexibility Analysis

128. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

129. In the Notice of Proposed Rulemaking, the Commission considers whether and how to reform the Form 477 data program, which serves as the Commission's primary tool for collecting broadband and local telephone data. After more than a decade of rapid innovation in the market for broadband and telephone services, the Commission believes it is time to consider whether modifying Form 477 will better serve the current and future needs of the Commission, Congress, consumers, and other stakeholders. Such reform seeks to improve the Commission's ability to carry out its duties under the Communications Act of 1934, as amended (the Act), and is an important part of the Commission's larger initiative to modernize and streamline how the Commission collects, uses, and disseminates data. Specifically, the Commission seeks comment on five categories of data that may be necessary to collect: (1) Deployment, (2) subscription, (3) price, (4) service quality, and (5) ownership and contact information. The Commission also seeks comment on whether there are other types of data necessary for the Commission to complete its mandates.

130. For these categories of data, the Commission identifies the purposes for which data may be needed, and seeks comment on the specifics of certain approaches to collecting data. For example, the Commission seeks comment on whether the Commission should use Form 477 to collect price data, which could help accomplish several purposes, including modernizing the universal service program to support broadband.

131. In addition, the Commission also seeks comment on whether service quality and customer satisfaction data may be necessary for several purposes, including increasing accountability in the Commission's universal service programs, ensuring public safety, promoting broadband deployment, and protecting consumers. The Commission then identifies certain metrics that could be collected, such as data regarding the number of trouble reports that customers make regarding network performance, and seeks comment.

132. The Commission also seeks comment on collecting ownership and contact information in order to reduce waste, fraud, and abuse in universal service programs and for other purposes.

133. The Commission also seeks comment on the extent to which technological tools and use of commercial and publicly available data can reduce the burden of producing information. The Commission also seeks comment on how to streamline the process in collecting the data it needs to inform its policymaking processes while minimizing the production burden on providers and the processing burden on the Commission.

B. Legal Basis

134. The legal basis for any action that may be taken pursuant to the Notice of Proposed Rulemaking is contained in Sections 1–5, 10, 11, 201–205, 211, 214, 215, 218–220, 251–271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 161, 201–205, 211, 214, 215, 218–220, 251–271, 301, 303, 304, 307, 309, 316, 332, 403, 409, 502, and 503, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302, and Section 102 of the Broadband Data Improvement Act, 47 U.S.C. 1303.

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

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

1. Wireline Providers

136. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are

small entities that may be affected by the rules and policies proposed in the NPRM. Thus under this category and the associated small business size standard, the majority of these incumbent local exchange service providers can be considered small providers.

137. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers can be considered small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

138. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

139. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Under that size standard, such a business is small if it has 1,500 or fewer employees a Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these Interexchange carriers can be considered small entities. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

140. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Notice.

141. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

142. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these PSPs can be considered small entities. According to Commission data, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers

are small entities that may be affected by our action.

143. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the Notice.

144. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees and one operated with more than 1,000. Thus under this category and the associated small business size standard, the majority of resellers in this classification can be considered small entities. To focus specifically on the number of subscribers than on those firms which make subscription service available, the most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, at of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,888,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860.000 or fewer small entity 800 subscribers; 5,888,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

2. Wireless Carriers and Service Providers

145. Below, for those services subject to auctions, the Commission notes that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

146. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

147. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, seven bidders won 31 licenses that qualified as very small business entities, and one bidder won one license that qualified as a small business entity.

148. *Common Carrier Paging.* The SBA considers paging to be a wireless telecommunications service and classifies it under the industry classification Wireless Telecommunications Carriers (except satellite). Under that classification, the applicable size standard is that a business is small if it has 1,500 or fewer employees. For the general category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The 2007 census also contains data for the specific category of "Paging" "that is classified under the seven-number NAICs code 5172101. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging Third Report and Order, the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average

gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

149. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. Therefore, approximately half of these entities can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

150. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

151. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

152. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

153. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable. The SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this service, the SBA uses the category of Wireless Telecommunications Carriers (except Satellite). Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

154. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards.

Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: Three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

155. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio ("SMR") geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

156. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

157. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

158. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

159. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, the Commission estimates that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

160. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

161. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Additionally, the Commission notes that most applicants for recreational licenses

in this category of wireless service are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

162. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

163. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that standard. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small.

164. *32.39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

165. *Wireless Cable Systems. Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

166. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired

Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." For these services, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use the classifications "firms" does not track the number of "licenses."

167. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

168. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, the Commission established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

169. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category "Wireless Telecommunications Carriers (except satellite)," which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications" firms" does not track the number of "licenses". The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

170. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

3. Satellite Service Providers

171. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts.

172. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Census Bureau data for 2007 show that 512 Satellite Telecommunications firms that operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

173. The second category, *i.e.* "All Other Telecommunications" comprises "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small

entities that might be affected by our action.

4. Cable and OVS Operators

174. Because Section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers may not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

175. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of such firms can be considered small.

176. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

177. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

178. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

5. Electric Power Generation, Transmission and Distribution

179. *Electric Power Generators, Transmitters, and Distributors.* The Census Bureau defines an industry group comprised of "establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours." According to Census Bureau data for 2007, there were 1,525 firms in this category that operated for the entire year. Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,525 or fewer firms may be considered small under the SBA small business size standard.

6. Internet Service Providers, Web Portals and Other Information Services

180. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services.

181. Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled "broadband." The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband.

182. The most current Economic Census data for all such firms are 2007 data, which are detailed specifically for ISPs within the categories above. For the first category, the data show that 396 firms operated for the entire year, of which 159 had nine or fewer employees. For the second category, the data show that 1,682 firms operated for the entire year. Of those, 1,675 had annual receipts below $25 million per year, and an additional two had receipts of between $25 million and $49,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

183. Internet Publishing and Broadcasting and Web Search Portals. This industry comprises establishments primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals). The publishing and broadcasting establishments in this industry do not provide traditional (non-Internet) versions of the content that they publish or broadcast. They provide textual, audio, and/or video content of general or specific interest on the Internet exclusively. Establishments known as Web search portals often provide additional Internet services, such as e-mail, connections to other Web sites, auctions, news, and other limited content, and serve as a home base for Internet users. The SBA has developed a small business size standard for this category; that size standard is 500 employees. Less than 500 employees is considered small. According to Census Bureau data for 2007, there were 2,705 firms that provided one or more of these services for that entire year. Of these, 2,682 operated with less than 500 employees and 13 operated with 500 to 999 employees. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

184. *Data Processing, Hosting, and Related Services.* This industry comprises establishments primarily engaged in providing infrastructure for hosting or data processing services. These establishments may provide specialized hosting activities, such as Web hosting, streaming services or application hosting; provide application service provisioning; or may provide general time-share mainframe facilities to clients. Data processing establishments provide complete processing and specialized reports from data supplied by clients or provide automated data processing and data entry services. The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 6,726 had annual receipts of under $25 million, and 155 had receipts between $25 million and $49,999,999 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

185. *All Other Information Services.* "This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives)." Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, Web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

186. In the Notice, the Commission proposes additional or modified information collections that would impose further reporting and recordkeeping requirements on current Form 477 filers, including small entities. Specifically, the NPRM invites comment on whether and how the Commission could collect data on the following additional or modified categories of data: (1) Deployment, (2) subscription, (3) price, (4) service quality, and (5) ownership and contact information. The Commission also seeks comment on whether to collect "other data" such as socioeconomic and social metrics data to assess socially and economically disadvantaged parties. The Commission seeks further comment on the extent to which technological tools and use of commercial and publicly available data can reduce the burden of producing information. The Commission also seeks comment on how to streamline the process in collecting the data the Commission needs to inform its policymaking processes while minimizing the production burden on providers and the processing burden on the Commission. The Commission invites comments on the merits and methodologies of such data collections to include suggestions and discussions of other alternatives not specifically discussed in the NPRM that would meet the objectives of the NPRM but would impose lesser burdens on smaller entities.

187. Based on these questions, the Commission anticipates that a record will be developed concerning actual burden and alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband deployment and availability throughout the nation.

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

188. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the

use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

189. In particular, the Commission seeks comment on whether it would be less burdensome for providers to submit address-level data with respect to the deployment and availability of services. The Commission also seeks comment on other ways that the Commission can ease the burden on small- and medium-sized providers.

190. Based on these questions, and the alternatives the Commission has discussed, the Commission anticipates that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities of obtaining improved data about broadband. The Commission welcomes proposals of alternatives from any of the approaches as described in Section A, supra.

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

191. None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011–4393 Filed 2–25–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110201085–1087–01]

RIN 0648–XY55

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2011 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements

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

ACTION: Proposed rule; request for comments.

SUMMARY: As part of the process for the NMFS Northeast Regional Administrator approval of proposed sector operations established under Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP), sectors are required to submit operations plans and sector contracts, and request an allocation of stocks regulated under the FMP for each fishing year (FY). This action is to provide interested parties an opportunity to comment on 19 FY 2011 proposed sector operations plans and contracts. Although NMFS received 22 proposed sector operations plans and contracts for approval, only 19 of the 22 sector operations plans and contracts are being considered for approval because 3 sectors, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector, were unable to fulfill the roster requirements, and, therefore, were excluded from consideration.

DATES: Written comments must be received on or before March 15, 2011.

ADDRESSES: You may submit comments, identified by 0648–XY55, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Fax:* (978) 281–9135, Attn: Allison Murphy.
- *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Sector Operations Plans and Contracts."

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Microsoft Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the sector operations plans and contracts and the environmental assessment (EA) are available at *http://www.regulations.gov* and from the NMFS NE Regional Office at the mailing address specified above. An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule and is comprised of the EA, and the preamble and the Classification sections of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Sector Policy Analyst, phone (978) 281–9122, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: NMFS announces that the Administrator, NE Region, NMFS (Regional Administrator), has made a preliminary determination that 19 sector operations plans and contracts, which were initially submitted to NMFS on or before September 1, 2010, and sector rosters, submitted on or before September 10, 2010, are: (1) Consistent with the goals of the FMP, as described in Amendment 16 Final Environmental Impact Statement (FEIS) and other applicable laws, (2) in compliance with the measures that govern the development and operation of a sector as specified in Section 4.2.3 of the Amendment 16 FEIS, and (3) have met administrative deadlines, including roster deadlines, for being proposed as a sector operations plan for FY 2011. This proposed rule summarizes many of the sector requirements as implemented by Amendment 16 and the requirements proposed for modification in Framework Adjustment 45 (FW 45), and solicits comments on the regulatory exemptions requested by sectors as well as the applicable environmental analyses.

As stated in Amendment 16, the deadline to submit operations plans and signed contracts was September 1, 2010. However, because NE multispecies permit holders were notified of their preliminary FY 2011 Potential Sector Contribution (PSC) in mid-August, 2010, NMFS extended the deadline to submit signed contracts from September 1, 2010, to September 10, 2010, to allow vessel owners adequate time to make a decision to join a sector for FY 2011 or to fish in the common pool. Based upon industry request, this deadline was further extended to December 1, 2010, to provide additional flexibility.

Background

The final rule implementing Amendment 13 to the NE Multispecies FMP (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, sector operations plans and contracts must contain certain elements, including a contract signed by all sector participants and an operations plan containing rules that sector members agree to abide by to avoid exceeding their sector TAC. An EA, or other appropriate analysis, must be prepared for the sectors that analyzes

the individual and cumulative impacts of all proposed sector operations. Additionally, the public must be provided an opportunity to comment on the proposed sector operations plans, sector contracts, and EA. The regulations require that, upon completion of the public comment period, the Regional Administrator must make a determination regarding approval of the sectors operations plans and contracts. Amendment 13 implemented the GB Cod Hook Sector in FY 2004, and Framework 42 (71 FR 62156; October 23, 2006) implemented the GB Cod Fixed Gear Sector in FY 2006.

Amendment 16 (74 FR 18262; April 9, 2010) expanded the sector management measures, revised the 2 existing sectors, and implemented an additional 17 new sectors for a total of 19 sectors, including the Northeast Fishery Sectors I through XIII, the Sustainable Harvest Sector, the Tri-State Sector, the Northeast Coastal Communities Sector, and the Port Clyde Community Groundfish Sector. Amendment 16 defined a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) [sic] in order to achieve objectives consistent with applicable FMP goals and objectives." A sector's TAC is referred to as an annual catch entitlement (ACE). Regional Administrator approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each FY. Each individual sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the PSC of permits participating in that sector. Sectors are self-selecting, meaning each sector maintains the ability to choose its members. Sectors may pool harvesting resources and consolidate operations to fewer vessels, if they desire.

FW 45, as proposed by the New England Fishery Management Council (Council) and available for public review through the **Federal Register**, would revise the rules for the 19 previously approved sectors and include 5 new sectors (for a total of 24 sectors), including the Maine Permit Bank Sector, the Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, the Rhode Island Permit Bank Sector, and Sustainable Harvest Sector 3. Approval of the operation of these new sectors is conditional on approval of measures proposed in FW 45. Similarly, approval of some of the exemptions requested by the sectors that submitted operations plans for FY 2011 is also contingent on FW 45. Therefore, final action regarding the approval of the operation of these sectors and the exemptions requested will not be made unless and until a final decision on FW 45 has been made. FW 45 is expected to be implemented on May 1, 2011. Concurrent with the implementation of FW 45, NMFS and the States of Maine, Massachusetts, New Hampshire, and Rhode Island have entered into separate Memoranda of Agreement (MOA) for the administration of State-managed permit banks. Terms and conditions for permit banks include: The permit bank may only transfer out ACE, it may not transfer in ACE; the permit bank may only transfer ACE to sectors for use by vessels that are 45 ft (13.72 m) in length or smaller, based out of ports with a population of 30,000 residents or less. The States of Massachusetts, New Hampshire, and Rhode Island were unable to fulfill roster requirements in time to be considered in this rulemaking process for FY 2011. The Maine Permit Bank Sector is proposed to consist of two privately held permits, as well as any additional permits purchased by the permit bank. The State issued a request for proposal, soliciting permit holders who are interested in selling permits to the State permit bank, and submitted this information to NMFS as additional prospective permits. The Maine Permit Bank Sector must finalize the purchase of permits from this list and notify NMFS by February 1, 2011.

Representatives from 22 of the 24 current and proposed sectors submitted operations plans and sector contracts, and requested an allocation of stocks regulated under the FMP for FY 2011. Neither the GB Cod Hook Sector, nor Northeast Fishery Sector I chose to submit an operations plan and sector contract for FY 2011. The Massachusetts Permit Bank Sector, the New Hampshire Permit Bank Sector, and the Rhode Island Permit Bank Sector submitted operations plans for FY 2011, but were unable to demonstrate membership requirements, and thus will not be considered for approval in this rule, reducing the number of potential FY 2011 sectors to 19. Two of the proposed FY 2011 sectors, Northeast Fishery Sector IV and Sustainable Harvest Sector 3, would operate as private lease-only sectors. The Sustainable Harvest Sector 3 has not explicitly prohibited fishing activity, and may transfer permits onto active vessels.

Sector ACEs

As of December 1, 2010, 834 of the 1,475 eligible NE multispecies permits, which would account for approximately 98.8 percent of the historical commercial NE multispecies landings during the qualifying period selected by the Council in Amendment 16, have preliminarily enrolled in a sector for FY 2011. Table 1 includes a summary of permits enrolled in a sector as of December 1, 2010. Permits enrolled in a sector, and the vessels associated with those permits, have until April 30, 2011, to withdraw from a sector and fish in the common pool for FY 2011. NMFS will publish final sector sub-ACL and common pool sub-ACL totals, based upon final rosters as soon as possible after the start of FY 2011.

Table 2 details the cumulative PSC (a percentage) each sector would receive based on their rosters as of December 1, 2010. Tables 3a and 3b detail the ACEs (in thousands of pounds and metric tons) each sector would be allocated based on their December 1, 2010, sector rosters for FY 2011. While the common pool does not receive a specific allocation of ACE, it has been included in each of these tables for comparison.

Note that individual sector members are not assigned a PSC for Eastern GB cod or Eastern GB haddock; rather each sector is allocated a portion of the GB cod and GB haddock ACE to harvest exclusively in the Eastern U.S./Canada Area. The amount of cod and haddock that a sector may harvest in the Eastern U.S./Canada Area is calculated by multiplying the percentage of the GB cod and GB haddock ACLs by the overall Eastern U.S./Canada Area GB cod and GB haddock TACs, respectively.

In accordance with Amendment 16, at the start of FY 2011, NMFS will withhold 20 percent of a sector's FY 2011 ACE for each stock for a period of up to 61 days, to allow time to process any FY 2010 ACE transfers submitted by May 14, 2011, and to determine whether the FY 2011 ACE allocated to any sector needs to be reduced, or any overage penalties need to be applied to accommodate an FY 2010 ACE overage by that sector. At the request of the Council, NMFS is considering relaxing the May 14 requirement to submit ACE transfers. The Council and sector managers will be notified of any change in this deadline in writing and the decision will be announced on the NERO Web site (*http://www.nero.noaa.gov/*).

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Table1. Summary of the number of permits, active vessels, gear type, and area fished for the proposed FY 2011 sectors.*

Sector	Permits Enrolled	Number of Active Vessels	Gear Type Fished	Regulated Mesh Areas
Northeast Fishery Sector II	85	42	100% trawl	Gulf of Maine (GOM), Offshore GB, Inshore GB and southern New England (SNE)
Northeast Fishery Sector III	94	47	85% gillnet, 5% hook gear, 5%pots/traps, 5% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IV	43	0	Lease-only sector	n/a
Northeast Fishery Sector V	34	27	3% gillnet, 97% trawl	Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VI	19	5	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VII	20	13	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector VIII	20	16	1% gillnet, 1% hook gear, 1% pots/traps, 93% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector IX	60	25	100% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector X	51	26	36% gillnet, 13% hook, 6% pots/traps, 45% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XI	47	21	80% gillnet, 20% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XII	11	6	50% gillnet, 50% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Fishery Sector XIII	35	29	5% gillnet, 95% trawl	GOM, Offshore GB, Inshore GB and SNE
Fixed Gear Sector	100	42	45% gillnet, 55% hook	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector I	106	38	14% gillnet, 86% trawl	GOM, Offshore GB, Inshore GB and SNE
Sustainable Harvest Sector III	18	0	Lease-only sector	GOM, Offshore GB, Inshore GB and SNE
Port Clyde Sector	40	24	52% gillnet, 48% trawl	GOM
Tri-State Sector	19	6	14% gillnet, 14% hook, 71% trawl	GOM, Offshore GB, Inshore GB and SNE
Northeast Coastal Community Sector	30	10	3% gillnet, 83% hook gear, 4% trawl	GOM, Offshore GB, Inshore GB and SNE
Maine Permit Bank Sector	3†	0	Lease-only sector	n/a

*The data in this table is from the sector operations plans rosters submitted as of December 1, 2010, and is subject to change based on final sector rosters, as well as approval of FW 45.

†The Maine Permit Bank Sector has submitted a list of prospective permits for purchase and provided verification that it currently consists of two privately held permits, although it must hold a minimum of three permits to be considered for approval. The roster will be finalized prior to publication of the final rule.

Table 2. Cumulative PSC (a percentage (%)) each sector would receive by stock for FY 2011.*†

Sector Name	GB Cod**	GOM Cod	GB Haddock **	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	5.6416	19.7846	11.6936	18.2263	1.7086	1.791	20.9032	8.7677	13.6092	1.6863	21.0839	16.6122	6.4119	12.3534
Northeast Fishery Sector III	1.2709	17.4856	0.1687	12.3099	0.0488	0.4077	9.5304	4.443	3.0767	0.0332	11.0202	1.5538	5.2303	7.8559
Northeast Fishery Sector IV	4.979	7.916	5.3991	6.3661	2.1572	2.3396	5.6746	9.1101	9.0588	0.6943	5.2478	6.3388	7.8068	5.5055
Northeast Fishery Sector V	2.0143	0.1073	3.924	0.3233	6.4631	24.5741	1.058	1.4542	1.7362	1.9868	0.3251	0.2892	0.2237	0.3079
Northeast Fishery Sector VI	2.0304	1.6847	2.8673	2.9631	2.6926	5.1235	2.0702	3.5871	4.3706	1.4196	3.1215	5.2605	3.7045	3.2193
Northeast Fishery Sector VII	4.3904	0.43	3.7914	0.5607	9.04	3.7049	2.6826	3.3925	3.0833	11.3642	0.8716	0.6455	0.7531	0.6917
Northeast Fishery Sector VIII	6.4095	0.4948	5.8444	0.2138	11.3303	5.6259	6.6737	1.7342	2.6131	16.1316	3.3715	0.4326	0.5011	0.6107
Northeast Fishery Sector IX	14.6337	1.6406	11.9719	4.6872	27.5215	8.0685	10.6527	8.3807	8.359	42.7723	2.4385	5.7757	4.1021	3.8914
Northeast Fishery Sector X	1.1837	5.5255	0.3145	2.6295	0.0173	0.5447	13.8233	2.0188	3.6106	0.0154	27.3616	0.5673	0.9707	1.5095
Northeast Fishery Sector XI	0.3946	12.5501	0.0359	2.4992	0.0008	0.0172	2.1833	1.4866	1.5349	0.0009	2.0241	0.9613	2.4354	6.5775
Northeast Fishery Sector XII	0.0153	2.4258	0.0026	0.8571	0.0008	0.0022	0.4841	0.749	0.6074	0.0025	0.3167	1.0592	2.4934	2.9572
Northeast Fishery Sector XIII	7.9921	0.7	14.8854	0.8584	17.215	12.5965	3.0581	3.8585	5.0255	10.8272	1.2532	4.5666	1.8671	2.3386
Fixed Gear Sector	28.1486	1.981	6.3547	1.3048	0.0124	0.3002	1.9144	0.5517	0.8365	0.0274	2.2061	2.9007	5.8446	7.8416
Sustainable Harvest Sector 1	16.3732	18.3448	28.777	40.259	11.6724	6.2706	10.0973	39.8059	33.9417	9.9403	5.4883	48.1545	51.0972	38.758
Sustainable Harvest Sector 3	1.1898	0.675	1.95	1.5146	0.5151	4.1559	2.2231	1.1166	1.5197	0.4392	3.2569	1.6237	0.8663	1.0483
Port Clyde Sector	0.088	4.0634	0.0316	2.1605	0.0033	0.6561	0.8644	5.8481	3.8644	0.002	1.2895	2.0374	3.6385	3.0264
Tri-State Sector	0.6744	0.801	1.4482	0.4622	7.2379	1.2235	2.039	1.0025	0.9406	1.9203	2.0841	0.0053	0.0184	0.0384
Northeast Coastal Community Sector	0.1709	0.765	0.1213	0.3389	0.8371	0.7194	0.6147	0.1485	0.2171	0.0685	0.9058	0.44	0.8562	0.4504
Maine Permit Bank Sector	0.1004	0.0217	0.0007	0.0016	0.0003	0.0001	0.1108	0.0363	0.0045	0.0045	0.5678	0	0	0.0282
All Sectors Combined	97.7008	97.3969	99.5823	98.5362	98.4745	78.1216	96.6579	97.492	98.0098	99.3365	94.2342	99.2243	98.8213	99.0099
Common Pool	2.2992	2.6031	0.4178	1.4639	1.5255	21.8782	3.3421	2.5078	1.9901	0.6635	5.7657	0.7755	1.1787	0.9901

SNE/MA Yellowtail Flounder refers to the SNE/Mid-Atlantic stock. CC/COM Yellowtail Flounder refers to the Cape Cod/GOM stock.

*The data in this table are based on signed roster contracts as of December 1, 2010.

** For FY 2011, the 4.56 percent of the GB cod ACE would be allocated for the Eastern U.S./Canada Area, while 31.26 percent of the GB haddock ACE would be allocated for the Eastern U.S./Canada Area.

† Percentages have been rounded to the nearest hundredth of a percent in this table, but thousandths of a percent are used in calculating ACEs in metric tons and tons. In some cases, this table shows a sector allocation of 0 percent of an ACE, but that sector is allocated a small amount of that stock.

Table 3a. Proposed ACE (in thousands of pounds) each sector would receive by stock for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	25	510	2105	2485	5465	316	30	21	433	601	371	75	73	2762	420	3800
Northeast Fishery Sector III	6	115	1860	36	79	214	1	5	198	304	84	1	38	258	343	2416
Northeast Fishery Sector IV	22	450	842	1147	2523	110	38	27	118	624	247	31	18	1054	512	1693
Northeast Fishery Sector V	9	182	11	834	1834	6	113	284	22	100	47	88	1	48	15	95
Northeast Fishery Sector VI	9	184	179	609	1340	51	47	59	43	246	119	63	11	875	243	990
Northeast Fishery Sector VII	19	397	46	806	1772	10	158	43	56	232	84	503	3	107	49	213
Northeast Fishery Sector VIII	28	579	53	1242	2732	4	198	65	138	119	71	714	12	72	33	188
Northeast Fishery Sector IX	65	1323	175	2544	5595	81	480	93	221	574	228	1893	8	960	269	1197
Northeast Fishery Sector X	5	107	588	67	147	46	0	6	286	138	98	1	95	94	64	464
Northeast Fishery Sector XI	2	36	1335	8	17	43	0	0	45	102	42	0	7	160	160	2023
Northeast Fishery Sector XII	0	1	258	1	1	15	0	0	10	51	17	0	1	176	163	910
Northeast Fishery Sector XIII	35	723	74	3164	6957	15	300	146	63	264	137	479	4	759	122	719
Fixed Gear Sector	124	2545	211	1351	2970	23	0	3	40	38	23	1	8	482	383	2412
Sustainable Harvest Sector 1	72	1480	1951	6116	13450	699	203	72	209	2727	925	440	19	8006	3350	11922
Sustainable Harvest Sector 3	5	108	72	414	911	26	9	48	46	77	41	19	11	270	57	322
Port Clyde Community Groundfish Sector	0	8	432	7	15	37	0	8	18	401	105	0	4	339	239	931
Tri-State Sector	3	61	85	308	677	8	126	14	42	69	26	85	7	1	1	12
Northeast Coastal Community Sector	1	15	81	26	57	6	15	8	13	10	6	3	3	73	56	139
Maine Permit Bank Sector	0	9	2	0	0	0	0	0	2	2	0	0	2	0	0	9
All Sectors	431	8833	10360	21164	46543	1710	1717	902	2003	6680	2671	4395	328	16496	6479	30454
Common Pool	10	208	277	89	195	25	27	253	69	172	54	29	20	129	77	305

*The data in this table are based on signed roster contracts as of December 1, 2010. Numbers are rounded to the nearest metric ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 metric tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs recommended by the Council in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

Table 3b. Poundage of ACE (in metric tons) by stock proposed for each sector for FY 2011.*†^

Sector Name	GB Cod east	GB Cod west	GOM Cod	GB Haddock east	GB Haddock west	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
Northeast Fishery Sector II	11	231	955	1127	2479	143	14	9	196	273	168	34	33	1253	191	1724
Northeast Fishery Sector III	3	52	844	16	36	97	0	2	90	138	38	1	17	117	156	1096
Northeast Fishery Sector IV	10	204	382	520	1145	50	17	12	53	283	112	14	8	478	232	768
Northeast Fishery Sector V	4	83	5	378	832	3	51	129	10	45	21	40	1	22	7	43
Northeast Fishery Sector VI	4	83	81	276	608	23	21	27	19	111	54	28	5	397	110	449
Northeast Fishery Sector VII	9	180	21	365	804	4	71	19	25	105	38	228	1	49	22	97
Northeast Fishery Sector VIII	13	263	24	563	1239	2	90	29	63	54	32	324	5	33	15	85
Northeast Fishery Sector IX	29	600	79	1154	2538	37	218	42	100	260	103	858	4	436	122	543
Northeast Fishery Sector X	2	49	267	30	67	21	0	3	130	63	45	0	43	43	29	211
Northeast Fishery Sector XI	1	16	606	3	8	20	0	0	21	46	19	0	3	72	72	918
Northeast Fishery Sector XII	0	1	117	0	1	7	0	0	5	23	8	0	1	80	74	413
Northeast Fishery Sector XIII	16	328	34	1435	3156	7	136	66	29	120	62	217	2	344	56	326
Fixed Gear Sector	56	1154	96	613	1347	10	0	2	18	17	10	1	3	219	174	1094
Sustainable Harvest Sector I	33	671	885	2774	6101	317	92	33	95	1237	420	200	9	3631	1520	5408
Sustainable Harvest Sector III	2	49	33	188	413	12	4	22	21	35	19	9	5	122	26	146
Port Clyde Community Groundfish Sector	0	4	196	3	7	17	0	3	8	182	48	0	2	154	108	422
Tri-State Sector	1	28	39	140	307	4	57	6	19	31	12	39	3	0	1	5
Northeast Coastal Community Sector	0	7	37	12	26	3	7	4	6	5	3	1	1	33	25	63
Maine Permit Bank Sector	0	4	1	0	0	0	0	0	1	1	0	0	1	0	0	4
All Sectors	195	4007	4699	9600	21111	775	779	409	909	3030	1211	1994	149	7483	2939	13814
Common Pool	5	94	126	40	89	12	12	115	31	78	25	13	9	58	35	138

*The data in this table are based on signed roster contracts as of December 1, 2010. Numbers are rounded to the nearest ton, but allocations are made in pounds. In some cases, this table shows a sector allocation of 0 tons, but that sector may be allocated a small amount of that stock in pounds.

† The data in this table include FY 2011 ACLs recommended by the Council in FW 45.

^ The data in the table represent the total allocations to each sector. NMFS will withhold 20 percent of a sector's total ACE for each stock for up to 61 days.

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Sector Operations Plans and Contracts

All sectors must, on an annual basis, submit an operations plan and sector contract to NMFS by a specified deadline to be authorized to fish and receive an allocation of groundfish for the following FY. Of the 24 current and FW 45 proposed sectors, 19 sectors met the September 1, 2010, operations plan deadline and the final December 1, 2010, NMFS roster deadline for FY 2011, including the Maine Permit Bank Sector. Each sector operations plan contains the rules under which each sector would fish. The sector contract provides the legal contract that binds members to a sector and its operations plan. Most sectors submitted one document to NMFS that encompasses both the operations plan and contract.

While each sector conducts fishing activities according to its approved operations plan, Section 4.2.3 of the Amendment 16 FEIS contains numerous provisions that apply to all sector operations plans and sector members. Under this amendment, all permit holders with a limited access NE multispecies permit that was valid as of May 1, 2008, are eligible to participate in a sector, including holders of permits currently held in confirmation of permit history (CPH). While membership in each sector is voluntary, each member (and his/her permits enrolled in the sector) must remain with the sector for the entire FY, and cannot fish in the NE multispecies days-at-sea (DAS) program outside of the sector (*i.e.,* in the common pool) during the FY. Participating vessels would be required to comply with all pertinent Federal fishing regulations, unless specifically exempted by a letter of authorization (LOA) issued by the Regional Administrator, as part of the approval of a sector's operations plan, as described further below. Sector operations plans may be amended in-season if a change is necessary and agreed to by NMFS, provided the change is consistent with the sector administration provisions. These changes would be included in updated LOAs issued to sector members and through amendments to the approved operations plan.

Sectors would be allocated all large-mesh groundfish stocks for which members have landings history, with the exception of Atlantic halibut, windowpane flounder, Atlantic wolffish, and SNE/MA winter flounder. Sector vessels would be required to retain all legal-sized allocated groundfish, unless an exemption is granted allowing sector vessels to discard legal-sized unmarketable fish at sea. Catch (including discards) of all allocated groundfish stocks by a sector's vessels would count against the sector's ACE, unless the catch is an element of a separate ACL sub-component, such as groundfish caught when fishing in an exempted fishery, or yellowtail flounder caught when fishing in the Atlantic sea scallop fishery. Sector vessels fishing for monkfish, skate, lobster (with non-trap gear), and spiny dogfish when on a sector trip (*e.g.,* not fishing under provisions of a NE multispecies exempted fishery) would have their groundfish catch (including discards) on those trips debited against the sector's ACE. Discard ratios applied to sectors would be determined by NMFS based on observed trips.

The final rule issued for Amendment 16 implemented a program whereby ACE may be transferred between sectors, although ACE transfers to or from common pool vessels is prohibited. Each sector would be required to ensure that its ACE is not exceeded during the FY. Additionally, Amendment 16 required sectors to develop independent third-party dockside monitoring programs (DSM) to verify landings at the time they are weighed by the dealer, and to certify that the landing weights are accurate as reported by the dealer. During FY 2010, 50 percent of trips from each sector are required to be randomly selected for DSM. Dockside monitoring coverage was specified to be reduced to 20 percent in FY 2011; however, FW 45, as proposed, would change the required coverage level for DSM to the level NMFS is able to fund, up to 100 percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. In addition, the Council voted to remove DSM requirements (a reporting requirement) from the list of prohibited exemptions for sectors. Sectors would be required to monitor their landings and available ACE and submit weekly catch reports to NMFS. In addition, the sector manager would be required to provide NMFS with aggregate sector reports on a daily basis when a threshold (specified in the operations plan) is reached. Once a sector's ACE for a particular stock is caught, a sector would be required to cease all fishing operations in that stock area until it could acquire additional ACE for that stock. Each sector would be required to submit an annual report to NMFS and the Council within 60 days of the end of the FY detailing the sector's catch (landings and discards by the sector), enforcement actions, and pertinent information necessary to evaluate the biological, economic, and social impacts from the sector, as directed by NMFS.

Each sector contract provides procedures to enforce the sector operations plan, explains sector monitoring and reporting requirements, presents a schedule of penalties, and provides authority to sector managers to issue stop fishing orders to sector members that violate provisions of the contract. Sector members could be held jointly and severally liable for ACE overages, discarding of legal-sized fish, and/or misreporting of catch (landings or discards). As required by Amendment 16, each sector contract submitted for FY 2011 states that the sector will withhold an initial reserve from the sector's sub-allocation to each individual member to prevent the sector from exceeding its ACE. Each sector contract also details the method for initial ACE allocation to sector members; for FY 2011, each sector has proposed that each sector member could harvest an amount of fish equal to the amount each individual member's permit contributed to the sector's ACE.

Amendment 16 contains several "universal" exemptions that are applicable to all sectors. These universal exemptions include exemptions from: Trip limits on allocated stocks; the GB Seasonal Closure Area; NE multispecies DAS restrictions; the requirement to use a 6.5-inch (16.51-cm) mesh codend when fishing with selective gear on GB; and portions of the GOM Rolling Closure Areas. Sectors may request additional exemptions from NE multispecies regulations through their sector operations plan. Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (not including DAS reporting requirements). FW 45 proposes to exclude DSM from the reporting requirements from which sectors may not be exempted.

Proposed FY 2011 Exemptions

A total of 31 exemptions from the NE multispecies regulations have been requested by sectors through their FY 2011 operations plans. These requests fall into several categories: Exemptions previously approved for FY 2010 (numbers 1–7); additional exemptions that were under consideration for FY 2010 at the time of the request for FY 2011 (numbers 8–9); exemptions disapproved in FY 2010 (number 10); novel exemptions for FY 2011 (numbers 11–19), dockside monitoring exemptions (numbers 20–30) and State permit bank exemptions (number 31). A

full discussion of the 31 exemptions is below. The requirements that were exempted in FY 2010 and have again been requested for FY 2011 are: (1) 120-day block out of the fishery required for Day gillnet vessels; (2) prohibition on a vessel hauling another vessel's gillnet gear; (3) limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS; (4) limitation on the number of gillnets imposed on Day gillnet vessels; (5) 20-day spawning block out of the fishery required for all vessels; (6) limits on the number of hooks that may be fished; and (7) DAS Leasing Program length and horsepower restrictions. Additional regulations that were under consideration for exemption for FY 2010 at the time of the request, and have again been requested for FY 2011 are: (8) the GOM Sink Gillnet Mesh Exemption; and (9) prohibition on the possession or use of squid or mackerel in the Closed Area I (CAI) Hook Gear Haddock (HGH) Special Access Program (SAP). For FY 2011, sectors requested an exemption from the follow regulation that was previously disapproved for FY 2010 is again being proposed for FY 2011: (10) access to GOM Rolling Closure Areas in May and June. For FY 2011, sectors have proposed novel exemptions from the following regulations: (11) prohibition on discarding; (12) extension of the GOM Sink Gillnet Mesh Exemption through the month of May; (13) daily catch reporting by Sector Managers for vessels participating in the CAI HGH SAP; (14) prohibition on pair trawling; (15) minimum hook size requirements for demersal longline gear; (16) minimum mesh size requirement; (17) Rhule and Haddock Separator requirements to utilize the 98.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™ in areas where these gear types are approved; (18) trawl gear restrictions in the U.S./Canada Area; and (19) the requirement to power a VMS while at the dock. Due to the Council's vote to exclude DSM from the list of prohibited exemptions in FW 45, sectors have requested exemptions from DSM requirements ranging from a complete exemption to area-, fishery-, and volume-based exemptions. Specifically, sectors requested novel exemptions from the following DSM requirements for FY 2011: (20) All DSM and roving monitoring requirements; (21) DSM requirements for directed monkfish, skate, and dogfish trips; (22) DSM requirements for jig vessels; (23) DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4535.9 kg) of groundfish per year; (24) DSM requirements in May when fishing in several mid-Atlantic NMFS Statistical Areas; (25) DSM requirements for vessels fishing west of 72°30′ W. long.; (26) DSM, roving monitoring, and hail requirements for hook-only or handgear vessels; (27) DSM, roving monitoring, and hail requirements for vessels using demersal longline, jig and handgear while targeting spiny dogfish in Massachusetts State waters of NMFS Statistical Area 521; (28) DSM requirements when at-sea monitoring has previously observed the trip; (29) the requirement to delay offloading due to the late arrival of the assigned monitor; and (30) the prohibition on offloading of non-allocated stocks prior to the arrival of the monitor. These exemptions were considered too late to be included in the EA for this action; they will be fully analyzed and included in the final EA. Finally, the State permit bank sector has requested an exemption from: (31) the requirement to provide a sector roster to NMFS by the specified deadline.

NMFS is soliciting public comment on the proposed sector operations plans and all 31 of the exemptions specified above. NMFS is particularly interested in receiving comments on the exemptions from the GOM Rolling Closure Areas, prohibition on pair trawling, minimum trawl mesh size requirements on targeted redfish trips, and dockside monitoring exemptions, because of particular concerns regarding the potential impacts of these exemptions.

1. 120-Day Block Out of the Fishery Requirement for Day Gillnet Vessels

The 120-day block out of the fishery requirement for day gillnet vessels was implemented in 1997 under Framework 20 (62 FR 15381; April 1, 1997) to help ensure that management measures for Day gillnet vessels were comparable to effort controls placed on other fishing gear types, given that gillnets continue to fish as long as they are in the water. Regulations at § 648.82(j)(1)(ii) require that each NE multispecies gillnet vessel declared into the Day gillnet category declare and take 120 days out of the non-exempt gillnet fishery. Each period of time taken must be a minimum of 7 consecutive days, and at least 21 of the 120 days must be taken between June 1 and September 30. An exemption from this requirement was previously approved for FY 2010 based upon the rationale that this measure was designed to control fishing effort and, therefore, is no longer necessary for sectors because sectors are restricted to an ACE for each groundfish stock, which limits overall fishing mortality. For additional information pertaining to this exemption and other exemptions previously approved in FY 2010, please refer to the proposed and final sector rules for FY 2010 (74 FR 68015, December 22, 2010 and 75 FR 18113, April 9, 2010, respectively). This exemption would increase the operational flexibility of sector vessels and would be expected to increase profit margins of sector fishermen. The exemption from the Day gillnet 120-day block requirement is requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

2. Prohibition on a Vessel Hauling Another Vessel's Gillnet Gear

Regulations at §§ 648.14(k)(6)(ii)(A) and 648.84(a) specify the manner in which gillnet gear must be tagged, requiring that information pertinent to the vessel owner or vessel be permanently affixed to the gear. No provisions exist in the regulations allowing for multiple vessels to haul the same gear. An exemption from this regulation, which was previously approved in FY 2010 because it was determined that the regulations pertaining to hauling and setting responsibilities are no longer necessary when sectors are confined to an ACE for each stock, would allow a sector to share fixed gear among sector vessels, thereby reducing costs. Consistent with the exemption as originally approved, the sectors requesting this exemption have proposed that all vessels utilizing community fixed gear be jointly liable for any violations associated with that gear. Additionally, each member intending to haul the same gear will be required to tag the gear with the appropriate gillnet tags, consistent with § 648.84(a). The exemption from the prohibition on hauling another vessel's gear is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

3. Limitation on the Number of Gillnets That May be Hauled on GB When Fishing Under a Groundfish/Monkfish DAS

Regulations at § 648.80(a)(4)(iv) prohibit Day gillnet vessels fishing on a groundfish DAS from possessing, deploying, fishing, or hauling more than 50 nets on GB were implemented as a groundfish mortality control under

Amendment 13. An exemption from the limit on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS was previously granted in FY 2010 because it would allow nets deployed under existing net limits of the Monkfish FMP to be hauled more efficiently by vessels dually permitted under both FMPs. The exemption from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

4. Limitation on the Number of Gillnets for Day Gillnet Vessels

Current gear restrictions in the groundfish regulated mesh areas (RMA) restrict Day gillnet vessels from fishing more than: 100 gillnets (of which no more than 50 can be roundfish gillnets) in the GOM RMA (§ 648.80(a)(3)(iv)); 50 gillnets in the GB RMA (§ 648.80(a)(4)(iv)); and 75 gillnets in the Mid-Atlantic (MA) RMA (§ 648.80(b)(2)(iv)). This exemption was previously requested and approved in FY 2010, and would allow sector vessels to fish up to 150 nets (any combination of flatfish or roundfish nets) in any RMA, and provides greater operational flexibility to sector vessels in deploying gillnet gear. This exemption was previously approved for FY 2010 because it is designed to control fishing effort and is no longer necessary for sector vessels, since each sector is restricted by an ACE for each stock, which caps overall fishing mortality. The exemption from the limit on the number of gillnets for Day gillnet vessels is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

5. 20-Day Spawning Block

Regulations at § 648.82(g) require vessels to declare out and be out of the NE multispecies DAS program for a 20-day period each calendar year between March 1 and May 31, when spawning is most prevalent in the GOM. This regulation was developed to reduce fishing effort on spawning groundfish stocks and an exemption was approved for FY 2010 sectors based upon the rationale that the sector's ACE will restrict fishing mortality, making this measure no longer necessary as an effort control. An exemption from this requirement would provide vessel owners with greater flexibility to plan operations according to fishing and market conditions. The exemption from the Day gillnet 20-day block requirement is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

6. Limitation on the Number of Hooks That May be Fished

Current regulations for the GOM RMA, GB RMA, and SNE and MAA RMAs at §§ 648.80(a)(3)(iv)(B)(*2*), 648.80(a)(4)(iv)(B)(*2*), 648.80(b)(2)(iv)(B)(*1*), and 648.80(c)(2)(v)(B)(*1*), respectively, prohibit vessels from fishing or possessing more than 2,000 rigged hooks in the GOM RMA, more than 3,600 rigged hooks in the GB RMA, more than 2,000 rigged hooks in the SNE RMA, or 4,500 rigged hooks in the MA RMA. This measure, which was initially implemented in 2002 through an interim action (67 FR 50292; August 1, 2002) and made permanent through Amendment 13, was designed to control fishing effort. An exemption from the number of hooks that a vessel may fish was approved for FY 2010 because it would allow sector vessels to more efficiently harvest ACE and is no longer a necessary control on effort by sector vessels. This exemption was granted to the GB Cod Hook Sector from 2004–2009, and was granted to the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XII; the Sustainable Harvest Sector; and the Tri-State Sector for either all or a portion of FY 2010. The exemption from the limitation on the number of hooks that may be fished is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

7. Length and Horsepower Restrictions on DAS Leasing

While sector vessels are exempt from the requirement to use NE multispecies DAS to harvest groundfish, sector vessels have been allocated, and still need to use, NE multispecies DAS for specific circumstances. For example, the Monkfish FMP includes a requirement that limited access monkfish Category C and D vessels harvesting more than the incidental monkfish possession limit must fish under both a monkfish and a groundfish DAS. Therefore, sector vessels may still use, and lease, NE multispecies DAS.

An exemption from the DAS Leasing Program length and horsepower baseline restrictions on DAS leases between vessels within their individual sectors, as well as with vessels in other sectors with this exemption was approved in FY 2010. Restricting sectors to their ACEs eliminates the need to use vessel characteristics to control groundfish fishing effort. Further, exemption from this restriction allows sector vessels greater flexibility in the utilization of ACE and DAS. Providing greater flexibility in the distribution of DAS could result in increased effort on non-allocated target stocks, such as monkfish and skates. However, sectors predicted little consolidation and redirection of effort in their FY 2010 operations plans. In addition, any potential redirection in effort would be restricted by the sector's ACE for each stock, as well as by effort controls in other fisheries (*e.g.,* monkfish trip limits and DAS). The exemption from the length and horsepower restrictions on DAS leasing is being requested by the GB Cod Fixed Gear Sector; the Maine Permit Bank Sector; all 12 Northeast Fishery Sectors; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

8. The GOM Sink Gillnet Mesh Exemption

The regulations require a minimum mesh size of 6.5-in (16.51-cm) for gillnets in the GOM RMA (§ 648.80(a)(3)(iv)). Minimum mesh size requirements have been used to reduce overall mortality on groundfish stocks, as well as to reduce discarding of, and improve survival of, sub-legal groundfish. An exemption from this regulation, which would allow vessels to potentially catch more haddock seasonally in the GOM, was considered in a supplemental proposed and final rule to FY 2010 sector operations (75 FR 53939; September 2, 2010; and 75 FR 80720; December 23, 2010) and is functionally equivalent to a pilot program that was proposed by the Council in Amendment 16. This exemption would allow sector vessels to use 6-inch (15.24-cm) mesh stand-up gillnets in the GOM RMA from January 1, 2012, to April 30, 2012, when fishing for haddock. The designation of this season is consistent with the original pilot program proposal and is the time period when haddock are most available in the GOM. Sector vessels utilizing this exemption would be prohibited from using tie-down gillnets during this period. Sector vessels may transit the

GOM RMA with tie-down gillnets, provided they are properly stowed and not available for immediate use in accordance with one of the methods specified at § 648.23(b).

The GOM Sink Gillnet Mesh Program, as proposed by the Council, stipulated that Day gillnet vessels would not be able to fish with, possess, haul, or deploy more than 30 nets per trip. Consistent with the original scope of the pilot program, for FY 2010 NMFS proposed in supplemental rulemaking that Day gillnet vessels utilizing this exemption also be limited to 30 nets per trip during this period, but requested public comment on a net limit of between 30 and 150 stand-up nets, analyzing up to 150 nets. Because Day gillnet vessels granted the sector exemption from Day gillnet net limits, as explained under exemption request 4, would not be subject to the general net limit in the GOM RMA, and thus able to fish up to 150 nets in the GOM RMA, they would be limited to 30 nets when fishing under this exemption program. Therefore, NMFS again requests public comment on the feasibility of allowing up to 150 nets when fishing under this exemption. The LOA issued to sector vessels that qualify for this exemption would specify the net restrictions to help ensure the provision is enforceable. There would be no limit on the number of nets that participating Trip gillnet vessels would be able to fish with, possess, haul, or deploy, during this period, because Trip gillnet vessels are required to remove all gillnet gear from the water before returning to port at the end of a fishing trip.

Recent selectivity studies have indicated that 6.5-inch (16.51-cm) sink gillnets may not be effective at retaining haddock at the current legal minimum fish size. An exemption from this requirement would provide sector vessels the opportunity to utilize a smaller mesh size gillnet to potentially catch more haddock in the GOM, and, thereby, increase efficiency and revenue in the fishery. NMFS believes that impacts to allocated target stocks resulting from this exemption would be negligible, given that fishing mortality by sector vessels is restricted by an ACE for allocated stocks, capping overall mortality. It is possible that a higher net limit for Day gillnet vessels participating in this program could result in an increase in the number of gillnets in the water at any one time and, therefore, potentially increase interactions with protected species. However, potential negative impacts to protected species from this exemption are expected to be low because additional nets may result in greater efficiency that could decrease the overall number of soak hours throughout the year as a sector's ACE is caught faster, thus potentially reducing interactions with protected species. In addition, sector vessels utilizing this exemption would still be required to comply with all requirements of the Harbor Porpoise Take Reduction Plan and Atlantic Large Whale Take Reduction Plan. The GOM Sink Gillnet Mesh Exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

9. Prohibition on the Possession or Use of Squid or Mackerel in the CAI Hook Gear Haddock SAP

The restriction on the possession or use of squid or mackerel as bait in the CAI Hook Gear Haddock SAP was originally approved by the Council in Framework 41, and analyzed in the FEIS for Framework 41, but inadvertently not included in the regulations implementing Framework 41. To correct this oversight, this provision was implemented as part of the Amendment 16 final rule. This restriction was intended to control the catch rates of cod, as squid and mackerel have been demonstrated to result in higher catch rates of cod. NMFS received comments on Amendment 16 that the bait restrictions should not apply to sector vessels. In the final rule implementing Amendment 16, NMFS stated that * * * because the Council did not provide for a specific exemption from such bait restriction in Amendment 16, NMFS cannot provide a sector an exemption from the bait requirements for this SAP in the final rule." However, because the bait restriction in Framework 41 was included under Section 4.2.2.2 "Requirements for Vessels not in the Hook Sector," NMFS, after further discussion with Council staff, understands that Framework 41 intended that this bait restriction apply only to vessels fishing outside of a sector (*i.e.,* the common pool). Based on this, NMFS intends to revise the current regulations for this requirement in an upcoming correction rule and, until the correction is effective, exempt any interested sector from this provision for the remainder of FY 2010 through an amendment to that sector's approved operations plan.

The GB Cod Fixed Gear Sector requested an exemption from this bait restriction, asserting the provision is an input control used to control fishing effort within the SAP under the DAS system and is unnecessary because catch by the sector will be limited by the ACE for each stock that caps overall fishing effort.

10. Access to GOM Rolling Closure Areas in May and June

The GOM Rolling Closure Areas were initially implemented in 1998 under Framework 25 to the FMP to reduce fishing effort in "areas with high GOM cod landings." However, Framework 26 referred to the rolling closure areas as "inshore 'cod spawning' closures." The stated purpose and need under Framework 26 (Section 3.0) states that the Council wanted to "take additional action to protect cod during the 1999 spawning season * * * and immediate action is necessary to reduce catches and protect the spawning stock." As a result, Framework 26 expanded the time period of these "cod spawning" closures, which included several 30-minute blocks. The final rule implementing Framework 26 (64 FR 2601; January 15, 1999) specified that the Council undertook action to expand these closures because of the "opportunity to delay fishing mortality on mature cod during the spring spawning period, a time when stocks aggregate and are particularly vulnerable to fishing pressure." Amendment 16 implemented universal sector exemptions from specific portions of the current GOM Rolling Closure Areas, and specifically did not exempt these portions of these areas due to the understanding that they protect spawning aggregations of cod. The Council tasked the Groundfish Plan Development Team (PDT) with reviewing and analyzing the existing GOM Rolling Closure Areas to determine which areas should remain closed, but stipulated that sectors may request specific exemptions from the GOM Rolling Closure Areas in their sector operations plans. On November 18, 2009, the Council voted to endorse a previous FY 2010 exemption request from block 138 in May.

Several sectors requested exemptions from GOM Rolling Closure Areas for FY 2010; however, these exemptions were ultimately rejected in the final rule implementing FY 2010 sector operations plans because the requesting sectors failed to consider that, despite ACE limits, direct targeting of spawning aggregations can adversely impact the reproductive potential of a stock, as opposed to post-spawning mortality. Additionally, justification that demonstrates that spawning fish could be avoided was not provided by the individual sectors. The final rule also cited that the existing GOM Rolling Closure Areas provide some protection to harbor porpoise and other marine

mammals. Six of the Northeast Fishery Sectors and the Sustainable Harvest Sector requested additional exemptions from these rolling closures in FY 2010.

The sectors requesting this exemption for FY 2011 assert that the GOM Rolling Closure Areas were originally intended as mortality closures, and are now unnecessary because fishing mortality for sectors is capped by the ACE allocated for each groundfish stock. Sustainable Harvest Sectors 1 and 3 are requesting access to 30-minute blocks 138 and 139 in May, and 30-minute block 139 in June. They argue that they should not be subject to additional mortality controls because sector vessels are limited to a hard TAC. Additionally, these sectors note that Table 177 in the Environmental Impact Statement for Amendment 16 indicates that May is not a particularly important time for groundfish spawning, with the exception of plaice and haddock. The Port Clyde Community Groundfish Sector is requesting access to 30-minute blocks 138 and 139 in May, and 30-minute blocks 139, 145, and 146 in June. The Port Clyde Community Groundfish Sector stipulated a strategy to minimize the impacts to spawning fish while promoting benefits to sector members. Under this strategy, the sector would restrict the harvesting of any species in these areas and times by capping the percentage of the sector's available ACE that could be harvested from these areas, and would institute a closure of these areas if, based on NMFS Northeast Fisheries Observer Program (NEFOP) data, a significant amount of spawning fish are harvested. Additionally, the sector proposes to implement a program to notify the sector manager and other vessels if spawning aggregations and/or marine mammals are detected in these areas. Finally, the Port Clyde Community Groundfish Sector contends that vessels fishing in the requested exemption areas would provide additional data, which could serve as a pilot study for future use of these areas and times by all sectors.

11. Prohibition on Discarding

Current regulations prohibit sector vessels from discarding legal-sized fish of any of the 14 stocks allocated to sectors while at sea (§ 648.87(b)(1)(v)(A)). Amendment 16 contained this provision to ensure that the sector's ACE is accurately monitored. Sectors requested a partial exemption from this prohibition, because of concerns that retaining and landing large amounts of unmarketable fish, including fish carcasses, creates operational difficulties and potentially unsafe working conditions for sector vessels at sea. The Regional Administrator considered a partial exemption from the requirement to retain all legal-sized fish in a supplemental proposed rule to FY 2010 sector operations. However, due to problematic mid-season implementation issues, further consideration of this exemption was delayed until FY 2011 in the supplemental final rule to FY 2010 sector operations. Under this proposed exemption, all legal-sized unmarketable allocated fish would be accounted for in the overall sector-specific discard rates in the same way discards of undersized fish at sea are currently accounted for, through observer and at-sea monitoring coverage. If approved, unmarketable fish discarded by a sector's vessels on observed trips would be deducted from that sector's ACE and incorporated into that sector's discard rates to account for discarding under this exemption on unobserved trips. Vessels in a sector opting for this exemption would be required to discard all legal-sized unmarketable fish at sea (*i.e.,* not just on select trips). Legal-sized unmarketable fish would be prohibited from being landed to prevent the potential to skew observed discards. NMFS is specifically seeking comment on the implementation of this requirement.

NMFS received several comments regarding this exemption in response to the proposed supplemental rule for FY 2010 sector operations, which initially proposed this exemption. This included comment from Oceana, who raised concern that this exemption would expand loopholes in the self-reporting component of the sector monitoring program, and encourage high-grading, thereby weakening the sector monitoring program and undermining the FMP goals, as well as National Standards 2 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act. However, the accounting of discards does not rely on self-reported data. Rather, actual discards by sector vessels observed by NMFS observers and at-sea monitors on sector trips are applied to the sector's ACEs in live weights, and incorporated into sector-specific discard rates that are used to account for discards by sector vessels on unobserved trips. In addition, this exemption is not expected to lead to high-grading of catch, given that there is a financial incentive for sector vessels to minimize discards of allocated stocks. Since discards of allocated stocks are applied to the sector's ACE through observer data and sector-specific discard rates, there is an incentive for sector vessels that opt for this exemption to land catch rather than discard it, to maximize the value of the sector's ACEs. Thus, this discarding exemption is intended to provide NMFS with additional data for the monitoring of sector ACEs. Currently, a sector vessel could illegally discard legal-sized unmarketable fish at sea for operational or safety reasons. If such discarding is occurring only on unobserved sector trips, these discards may be unaccounted for in the sector-specific discard rates. This exemption would allow sectors to legally discard these fish at sea and, therefore, would provide NMFS with a means of capturing some of this information. Therefore, allowing the discarding of unmarketable fish and incorporating observed unmarketable discards into the sector-specific discard rates under this exemption would account for any illegal discarding that may currently be occurring on unobserved trips and, thereby, improve the information being used to extrapolate discards across all sector trips.

Finally, NMFS received a comment that the proposed rule did not contain sufficient analysis of the exemption and that further analysis should be completed prior to implementation. This exemption was analyzed in the FY 2010 proposed supplemental rule and EA, and is further discussed here. The analysis of this exemption was based upon information available at the time of the analysis, which consisted of observer data from sector trips through November 3, 2010. Dealer reports and vessel trip reports (VTRs) were not designed to specifically monitor the landing and handling of unmarketable fish, so there is little information available from these sources about the amount of unmarketable fish that sector vessels have landed to date. During the development of this exemption, NMFS identified the need for, and implemented, a specific code that could be used by vessels to report the landing of unmarketable fish on their VTRs. A permit holder letter sent on October 20, 2010, introduced this VTR code to vessel operators and included instructions for both vessel operators and dealers for the reporting of unmarketable fish. If approved, legal-sized unmarketable fish could be discarded at sea, and recorded as such on the VTR. Sectors that do not receive this exemption would continue to use the new VTR code. NMFS observers and at-sea monitors record the amount of each species kept by sector vessels because they are prohibited from discarding such fish by the regulations. Fish recorded under this category likely

consist of unmarketable legal-sized fish of allocated stocks that could not otherwise be discarded by the vessel operator and, therefore, represent the best estimate of the amount of unmarketable fish that sector vessels encounter on a given trip and may be expected to discard under this exemption. Observer data from sector trips during the first half of FY 2010 show that retained legal-sized unmarketable groundfish have been observed on 7.3 percent of observed sector trips. Observers reported a total of 14,423 lb (6,542 kg) of unmarketable groundfish that have been retained by sector vessels on 161 trips. Gillnet vessels encountered the most unmarketable groundfish per trip, with an average of 92 lb (42 kg), and a maximum of 402 lb (182 kg). Hook vessels retained an average of 64 lb (29 kg) of unmarketable groundfish per trip (maximum of 150 lb (68 kg)), and trawl vessels retained an average of only 23 lb (10 kg) of unmarketable groundfish per trip (maximum of 14 lb (6 kg)). In addition, unmarketable fish have a much greater occurrence on gillnet trips than trips using hook or trawl gear, during the time from May 1 through November 3, 2010, with observers reporting legal-sized unmarketable fish on 151 gillnet trips, but only 7 hook trips and 3 trawl trips. The occurrence of legal-sized unmarketable fish that had to be retained is limited, and does not appear to be a significant portion of sector catch. To date, these observed fish, and other unmarketable fish landed, are deducted from the sector's ACE. For sectors opting for the discarding exemption, any unmarketable fish that would have been required to be landed without the exemption and now are discarded by sector vessels will be recorded by observers as discards and applied to sector ACEs through discard data and sector-specific discard rates on unobserved trips.

The discarding exemption, in combination with the enhanced reporting of legal-sized unmarketable fish, would improve the monitoring of this unmarketable portion of sector catch, particularly on unobserved sector trips. The discard exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors II–III, V–VI and X–XII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector.

12. Extension of the GOM Sink Gillnet Mesh Exemption Through May

For a full description of the GOM Sink Gillnet Mesh Exemption, please *see* exemption 8 of this section. Northeast Fishery Sectors III, VI–VIII, and X have requested that the GOM Sink Gillnet Mesh Exemption, proposed above, be extended an additional month, from the end of April until the end of May.

This exemption would provide sector vessels the opportunity to potentially catch more GOM haddock, a fully rebuilt stock, during the months that haddock are most prevalent, and would also provide sector participants the opportunity to more fully harvest their allocation of GOM haddock, therefore increasing efficiency and revenues for vessel participating in this program. The sectors assert that impacts to non-target species would be minimal, because fishing effort by sectors vessels is restricted by ACE for allocated stocks, which caps overall mortality.

13. Daily Catch Reporting by Sector Managers for Vessels Participating in the CA I Hook Gear Haddock SAP

The regulations at § 648.85(b)(7)(v)(C) require that sector vessels that declared into the CA I Hook Gear Haddock SAP submit daily catch reports to the sector manager, and that the sector manager report catch information to NMFS, on a daily basis. This reporting requirement was originally implemented through Framework 40A, to facilitate real-time monitoring of quotas by both the sector manager and NMFS. Amendment 16 granted authority to the Regional Administrator to determine if weekly sector reports were sufficient for the monitoring of most SAPs. Through the final rule implementing Amendment 16, the Regional Administrator alleviated reporting requirements for sector vessels participating in other Special Management Programs (SMPs), though these reporting requirements were retained for the CA I Hook Gear Haddock SAP, given that NMFS must continue to monitor an overall haddock TAC that applies to sector and common pool vessels fishing in this SAP.

The GB Cod Fixed Gear Sector requests that NMFS exempt the sector manager from submitting these reports to NMFS, opting instead to mandate that participating vessels submit a VMS catch report directly to NMFS containing all required information, analogous to the requirements for common pool vessels. The sector contends that this scenario would provide NMFS with data in a more timely fashion.

NMFS is currently evaluating the possibility of using the sector manager's weekly report, rather than daily reports, to monitor the TAC. Sector weekly reports have provided information in a timely enough manner to adequately monitor other SAPs. However, the weekly reports, in their current form would not provide sufficient information. Furthermore, NMFS is concerned that this provision may reduce the sector manager's capability to accurately monitor the sector's ACE in a timely manner. NMFS is soliciting comment on both the utility of the current reporting method, and the alternate reporting options highlighted above.

14. Prohibition on Pair Trawling

The regulations at § 648.14(k)(5)(vi) prohibit pair trawling in the NE multispecies fishery. This prohibition was originally implemented through an emergency interim rule (58 FR 32062; June 8, 1993), extended through a second emergency interim rule (59 FR 26; January 3, 1994), and made permanent in Amendment 5 (59 FR 9872; March 1, 1994). The first emergency interim rule prohibited pair trawling, based on record low abundance of spawning stock biomass and high fishing mortality of cod, conditions of the haddock stock and benefits to reducing discards of haddock, the high efficiency of this gear type, and an increase in the number of vessels electing to use this gear. The second emergency interim rule extending the prohibition noted that pair trawls are "highly efficient gear, and its unlimited use during a period of severely declining haddock and cod stocks is counterproductive to the goal of reducing effort in an overfished fishery." Amendment 5 also noted that pair trawling vessels "had significantly higher revenue-per-day-absent and landings-per-day-absent than otter trawl vessels fishing singly," further demonstrating the efficiency of this gear type. While initially intended to protect cod and haddock stocks, which at the time were at all-time low levels of abundance, the rule noted that "the stock condition and landings will continue to decline until such time that meaningful measures are implemented that will eliminate the overfished condition of the stocks and reduce the exploitation rate to levels that will allow significant rebuilding to take place."

Northeast Fishery Sectors VI–X and XIII are requesting an exemption from the pair trawling restriction for FY 2011, while restricting vessels to using either the Ruhle Trawl or the Eliminator Trawl. The sectors comment that a prohibition of this highly efficient gear type was intended to reduce fishing mortality. Given this, the sectors assert that, since sectors are managed under an ACE, they should be exempt from effort controls. These sectors anticipate that

the exemption will enable participating vessels to harvest the sector's ACE more efficiently and economically.

However, NMFS has concerns with granting this exemption because, due to the efficiency of pair trawling, sectors may not have sufficient ACE for all stocks caught by this gear, and may be unable to selectively target desired stocks. Additionally, this gear configuration has not been studied, and it could be that an increase in herding could diminish the established selectivity of the Ruhle Trawl. NMFS is especially interested in receiving public comment on this exemption request.

15. Minimum Hook Size Requirements for Demersal Longline Gear

The regulations at §§ 648.80(a)(3)(v), 648.80(a)(4)(v), 648.80(b)(2)(v), and 648.80(c)(2)(iv) specify that "all longline gear hooks must be circle hooks, of a minimum size of 12/0." This restriction was implemented through Amendment 13 to reduce the catch of small fish and improve their survivability in the hook fishery. In addition, the Amendment 13 FEIS further reasoned that "limits on the number of hooks are intended to reduce overall effort in the hook fishery."

The Northeast Coastal Communities Sector requested an exemption from this regulation, which would allow sector members the ability to target flatfish, species of fish which generally have smaller mouths than other groundfish. The sector asserts that bycatch could be avoided by selectively placing this gear, and that this exemption would allow its members to more effectively harvest the sector's ACE and increase profit margins of sector fishermen. However, NMFS has concerns with allowing a smaller hook size, given that this could increase the catch of sublegal fish.

16. Minimum Mesh Size Requirements on Targeted Redfish Trips

The regulations at § 648.80 specify the minimum mesh size that may be used in fishing nets on vessels fishing in the GOM, GB, SNE, and MA RMAs. The regulations implementing the minimum mesh size were initially adopted through interim rules in 2001 and 2002 (67 FR 21140, 29 April 2002; 67 FR 50292, August 1, 2002) and made permanent through Amendment 13. This provision was intended to provide protection to spawning fish and increase the size of targeted fish. Framework 42 further modified the mesh regulations in the SNE/MA RMAs to reduce discards of yellowtail flounder.

Northeast Fishery Sectors II, V–X and XIII are requesting an exemption from the current minimum mesh size codend on targeted redfish trips for FY 2011; replacing this requirement with a 5-inch (12.7-cm) minimum mesh size codend on directed redfish trips. The sectors also propose that members be required to notify the manager at least 48 hrs in advance of such a trip, and be required to have 100 percent observer or at-sea monitor coverage while utilizing this gear. Also, to accurately monitor the ACE, Sector members would be required to submit catch reports to the sector manager on a daily basis while at sea. The requesting sectors argue that this exemption could increase the operational flexibility of sector vessels and could increase profit margins of sector fishermen.

The sectors referenced several studies in support of this exemption. A study entitled "The Status of the Fishery Resources of the Northeast U.S.," by Mayo, R., L. Col and M. Traver 2006 describes the gear historically used in the redfish fishery. It notes that the minimum mesh size restrictions, along with "low biomass and truncated size and age structure of the redfish stock have effectively eliminated the prosecution of a fishery since the mid 1980s."

Anecdotal information for FY 2010 provided by some industry members, as well as information in a study entitled "ME Boats go for Redfish the New-Fashioned Way," by Peter K. Prybot, in the September 2010 issue of Commercial Fisheries News, suggests that some sector members have been successful at targeting redfish utilizing gear with 6.5-inch (16.51-cm) mesh. NMFS is currently funding a study through the Northeast Cooperative Research Partners Program to investigate strategies and methods to sustainably harvest the redfish resource in the GOM through a network approach, including fishing enterprises, gear manufacturers, researchers, and social and economic experts and managers, which will include the investigation of success of various mesh sizes within the fishery. Given that the use of this smaller mesh could negatively impact spawning fish and populations of flounders, which the current minimum mesh sizes were intended to protect, NMFS has reservations about approving this exemption, until such time that results from this study can first be considered.

17. Rhule and Haddock Separator Requirements to Utilize the 98.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™

Through several separate rulemakings (73 FR 29098, May 20, 2008; 73 FR 40186, July 14, 2008; 73 FR 52214, August 9, 2008; and 73 FR 53158, August 15, 2008), NMFS has authorized the use of the Ruhle Trawl (f.k.a., Eliminator Trawl and Haddock Rope Trawl) for use in the B DAS Program, Eastern U.S./Canada Haddock SAP, and the Eastern U.S./Canada Area Program. NMFS approval of this gear was based upon a recommendation from the Council, following a review of a study that demonstrated that this experimental net was successful at targeting haddock and significantly reducing the catch of other groundfish species. NMFS, however, noted in the final rule approving this gear for use in the B DAS Program and the Eastern U.S./Canada Haddock SAP that the "results of the experiment cannot be used to extrapolate to smaller scale haddock rope trawl gear that could be readily used by smaller horsepower vessels" but that "research is currently underway testing a smaller, modified version of the haddock rope trawl, and at-sea observations indicate that this smaller net may also be effective at reducing bycatch."

Although the results of the smaller-scale trawl study have yet to be reviewed by the Council, several of the Northeast Fishery Sectors (II, V–X, and XIII) have requested an exemption to utilize the 8.4 in × 15.7 in (250 cm × 40 cm) Eliminator Trawl™ in areas and programs where the Ruhle trawl has been approved. In addition, these sectors wish to have this gear type included in the Ruhle trawl discard strata. Therefore observed discards from this smaller net would apply to the current Ruhle trawl strata, and the discard rate for the Ruhle trawl strata would apply to all unobserved trips utilizing this gear. The sectors assert that approving this gear type will provide sector members greater flexibility, as many vessels are too small to utilize the larger version of the net. In addition, the sectors argue that, based upon the final results of "Exploring Bycatch Reduction in the Haddock Fishery through the use of the Eliminator Trawl with Fishing Vessels in the 250 to 550 HP Range," by Laura Scrobe, David Beutel and Jonathan Knight, this smaller net may reduce the catch of major stocks of concern, while allowing vessels to selectively target haddock. As with the previous mesh size exemption request discussed under exemption 16, NMFS has concerns with granting this exemption prior to reviewing the results of the report studying this smaller net.

18. Gear Requirements in the U.S./Canada Management Area

Current regulations require that a NE multispecies vessel fishing with trawl gear in the Eastern U.S./Canada Area

must fish with a Ruhle trawl, a haddock separator trawl, or a flounder trawl net. The final rule implementing Amendment 13 clarified that the restriction to use a haddock separator trawl or a flounder trawl net was designed to "ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal."

The requirement to utilize a Ruhle trawl in the Eastern U.S./Canada Area was implemented through several inseason actions, and made permanent in Amendment 16. This gear configuration was originally authorized for its demonstrated ability to allow the targeting of haddock, an under-harvested stock, while reducing bycatch of cod and yellowtail flounder stocks, which were identified as overfished. The addition of the Ruhle Trawl to gear previously approved (haddock separator trawl and flounder trawl net) provided added flexibility to trawl vessels.

The Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the trawl gear requirements in the Eastern U.S./Canada Area, to allow either a standard otter trawl or modified versions of currently approved trawl gear (Ruhle trawl, a haddock separator trawl, or a flounder trawl net) to access the area. The sectors both assert that this measure was initially designed as a method to control fishing effort and therefore is no longer necessary because a sector is now constrained by the allocated ACE for each stock, which caps overall fishing mortality.

19. Requirement to Power a VMS While at the Dock

The regulations at § 648.10(b)(4) require that a vessel issued certain categories of NE multispecies permits, or eligible and participating in a sector, to have an operational VMS unit onboard. Additionally, § 648.10(c)(1)(i) requires that the VMS units onboard a NE multispecies vessel transmit accurate positional information (*i.e.,* polling) at least every hour, 24 hr per day, throughout the year. Amendment 5 first included the requirement for vessels to use VMS. While the requirement to use VMS was delayed until a later action (Framework 42 ultimately implemented a VMS requirement for NE multispecies DAS vessels), NMFS supported polling due to its ability to insure adequacy of monitoring requirements and address enforcement concerns, and because it could be beneficial in the event of an at-sea emergency.

Under certain circumstances, the regulations at § 648.10(c)(2) allow NMFS to issue a LOA allowing vessels to sign out of the VMS program for a minimum of 30 consecutive days. The ability to power-down a VMS unit was justified in Amendment 13 to reduce vessel costs when reduced DAS allocation limited fishing opportunities to a small portion of the year.

The Tri-State Sector requested an exemption from the requirement to power a VMS while at the dock, noting that the VMS was used to track DAS and proximity to closed areas, and would require that the VMS unit be operational when the vessel is away from the dock. The Tri-State Sector further noted that other reporting requirements (trip start and trip end hails, VMS declarations, *etc.*) received by the sector manager and NMFS could be used to monitor vessels granted this exemption.

20. All DSM and Roving Monitoring Requirements

Amendment 13 adopted the concept that sectors are responsible for monitoring sector catch, but provided few details for that requirement. Amendment 16 formalized this requirement, by specifying that sector operations plans must include how a sector will monitor its catch to assure that sector catch does not exceed the sector allocation; including developing and implementing an independent third-party DSM program for monitoring landings from sector trips and utilization of ACE. The DSM program was implemented to ensure that catch is accurately documented and that all sectors are being held to the same standards, for the purpose of bolstering compliance monitoring efforts.

The GB Cod Fixed Gear Sector and Northeast Fishery Sectors II–III and V–XIII have requested an exemption from all DSM requirements. The GB Fixed Gear sector contends that this program has added little value to the sectors' infrastructure or sector members' businesses. Additionally, the sector argues that ambiguities with the DSM program, such as the failure to require confirmation that all landings have been offloaded, the fact that NMFS does not utilize or cross-reference this data, and the ability of fishermen to alter behavior when notified of a monitoring event, prevent the program from meeting its stated objectives. The GB Cod Fixed Gear Sector also asserts that NMFS has yet to request any dockside or roving monitoring reports to validate or verify a landing event, and therefore the requirement is not being utilized as an enforcement tool. The Northeast Fishery Sectors contend that the implementation of the DSM program has not met the stated objectives of the DSM program in an economically efficient manner. They contend that DSM was meant as a means for sector managers to verify catch, and that the Northeast Fishery Sector managers do not utilize DSM reports, but rather opt to utilize dealer weigh-out slips for this purpose. NMFS acknowledges that the DSM program could be strengthened, and intends to modify DSM standards for the start of FY 2011, to help ensure better compliance monitoring, the primary objective of the program.

At its November 18, 2010, meeting, the Council voted to include in FW 45 a provision that would remove DSM from the list of reporting requirements, thereby removing this requirement from the list of prohibited sector exemptions. Many of the DSM requirements that were requested for exemption in the operations plans submitted as of September 1, 2010, were, at the time, prohibited under Amendment 16 and, therefore, not analyzed in the sector EA, given that there was insufficient time to do so. This request, and other DSM exemption requests, will be analyzed in the final EA.

21. DSM Requirements for Directed Monkfish, Skate, and Dogfish Trips

As explained above in exemption 20, Amendment 13 adopted the concept that sectors are responsible for monitoring sector catch, and Amendment 16 formalized these requirements. Unless a vessel is fishing in an exempted fishery, directed monkfish, skate and dogfish trips are considered a sector trip because a groundfish trip declaration is required (NE multispecies DAS or sector trip), since gear utilized on such trips is capable of catching groundfish and groundfish retention is permitted.

The Northeast Coastal Communities Sector; and Northeast Fishery Sectors II–III, V–X, and XIII have requested an exemption from DSM while on directed fishing trips on monkfish, skate, and/or dogfish. Specifically, the Northeast Coastal Communities Sector has requested an exemption from DSM on dogfish trips when vessels are utilizing hook gear. The sector contends that data collected from observed FY 2010 dogfish trips demonstrate that little groundfish incidental catch occurs, making the cost of DSM per pound of groundfish too low to support it. The Northeast Fishery Sectors have requested an exemption on all directed

monkfish, skate, and dogfish trips, contending that the implementation of DSM in FY 2010 has not met the objectives stated in Amendment 16 in an economically efficient manner. These sectors state that providing an exemption on these trips could provide economic relief from the costs of monitoring trips that land little groundfish.

NMFS believes that this request poses operational concerns. Vessels fishing on directed monkfish, skate, and dogfish trips, unless in an exempted fishery, are declared as a sector trip, and/or require the declaration of a DAS. Such trips are not prohibited from targeting or landing groundfish and, therefore, may land substantial amounts of groundfish. Since these trips are made through groundfish declarations, it is currently impossible to distinguish these trips from directed groundfish trips. Sector discard rates, a crucial component of ACE monitoring, are calculated based on total catch, not solely groundfish catch. A reduction in monitoring would decrease oversight of, and confidence in, this crucial calculation. Additionally, the sectors requesting this exemption did not address the benefit that this program provides to compliance monitoring.

22. DSM Requirements for Jig Vessels

Jigging, with respect to the NE multispecies fishery, is defined at § 648.2 as fishing with handgear, handline, or rod and reel gear using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved with an up and down motion. Jigging gear is not exempted gear and, therefore, sector trips utilizing this gear are required to participate in the DSM program.

The Northeast Coastal Communities Sector requested an exemption from DSM requirements for vessels using jig gear, noting that vessels utilizing this gear type are able to target cod with little incidental catch of other allocated groundfish species. The sector points out that the cost of monitoring these trips is disproportionately high, due to the comparatively small amount of catch that this gear type yields.

The Council, through FW 45, proposes to remove DSM requirements in FY 2011 for common pool vessels with Handgear A and B permitted vessels, as well as for Small Vessel permitted vessels, because small quantities of groundfish landed by these permit categories would make monitoring such trips uneconomical. Vessels that have a valid Handgear or Small Vessel permit and that fish with jig gear would be exempt from DSM, if the provision in FW 45 is approved by NMFS.

23. DSM Requirements for Hook Vessels When the Sector Has Caught Less Than 10,000 lb (4,535.9 kg) of Groundfish per Year

The regulations at § 648.87(b)(1)(v)(B)(*3*) specify that any DSM service provider must provide coverage that is distributed in a random manner among all trips, such that the coverage is representative of fishing activities by all vessels within each sector and by all sector vessels operations throughout the fishing year.

The Northeast Coastal Communities Sector has requested an exemption from DSM requirements for hook vessels when the sector has caught less than 10,000 lb (4535.9 kg) of groundfish per year, noting that, in FY 2010, trips by sector vessels have, thus far, yielded little groundfish, and due to the remote location of its ports, DSM has been cost prohibitive. The sector proposes a 10,000-lb (4,535.9 kg) threshold for the year, above which DSM would be required, and stated that catch could be verified through a comparison of dealer data, vessel trip reports, and VMS catch reports. The manager proposes to notify NMFS when 8,000 lb (3,628.7 kg) of groundfish have been caught, and would submit to DSM program requirements at that time.

NMFS is concerned that this threshold is somewhat arbitrary and is interested in public comment on this. Additionally, a 10,000-lb (4,535.9-kg) cap is a significant amount of landings, and exempting a sector from DSM requirements could raise compliance monitoring concerns (as noted above).

24. DSM Requirements in May When Fishing in Certain Mid-Atlantic (MA) Areas

Upon receiving exemption requests to the DSM requirement for vessels fishing in SNE and MA waters, the Regional Administrator, in a September 1, 2010, letter to the Council, requested that the Council consider establishing a geographic boundary outside of which DSM would not be required. At its November 18, 2010, meeting, the Council considered this request and supported removal of DSM from the list of prohibited exemptions to allow sectors to request geographic- and gear-based exemptions from DSM.

Northeast Fishery Sectors VI–VIII and X–XIII have requested an exemption from DSM in May and June on non-groundfish directed trips that occur in the following NMFS statistical areas: 615, 616, 621, 622, 623, 625, 626, 627, 631, 632, 633, 635, 637, and 638. The sectors point out that historical data indicate that little groundfish incidental catch has been observed in these areas, and monitoring of such trips is therefore not a beneficial use of financial resources.

25. DSM Requirements for Vessels Fishing West of 72°30′ W. long.

Please *see* exemption 24 for background on this request. Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the DSM requirements for vessels fishing west of 72°30′ W. long., noting that historical data indicate that little groundfish incidental catch has been observed in this area, and monitoring of such trips is therefore not a beneficial use of financial resources.

26. DSM, Roving Monitoring, and Hail Requirements for Hook-Only or Handgear Vessels

Neither hook gear nor handgear, as defined in § 648.2, are exempted gear, and therefore sector trips utilizing these gear types are required to have DSM.

The GB Cod Fixed Gear Sector requested an exemption from DSM, roving monitoring, and hail requirements for hook-only or handgear vessels, noting that vessels utilizing this gear type are among the smallest operators and have historically landed small amounts of groundfish. The sector contends that the proceeds from these trips may be less than the cost of deploying a dockside or roving monitor, making the cost of monitoring of these vessels disproportionately high relative to the rest of the groundfish fleet. The sector also requests that, if this exemption is granted, these vessels should also be exempt from hail requirements. Although FW 45 proposes to remove DSM requirements from the list of regulations that sectors may not be exempt from, hail requirements would remain reporting requirements, and therefore may not be exempted. While hails are widely viewed as necessary for the deployment of dockside monitors, NMFS receives this information and also uses it to coordinate the deployment of enforcement resources in monitoring offloads.

As explained above in exemption 22, the Council, through FW 45, proposes to remove DSM requirements in FY 2011 for common pool vessels with Handgear A and B permitted vessels, as well as for Small Vessel permitted vessels.

27. DSM, Roving Monitoring, and Hail Requirements for Vessels Using Demersal Longline Gear, Jig Gear, and Handgear While Targeting Spiny Dogfish in Massachusetts State Waters

Unless a vessel is fishing in an exempted fishery, directed monkfish, skate, and dogfish trips are considered sector trips, because a groundfish trip declaration is required (NE multispecies DAS or sector trip), since gear utilized on such trips is capable of catching groundfish and groundfish retention is permitted.

The GB Cod Fixed Gear Sector has requested an exemption from DSM, roving monitoring, and hail requirements for vessels using demersal longline gear, jig gear, and handlines while targeting spiny dogfish in Massachusetts State waters of NMFS Statistical Area 521, asserting that its FY 2010 sector data indicate little groundfish incidental catch in this area. The sector contends that deploying monitors on such trips provides little value to a program designed to monitor landings of regulated groundfish.

NMFS believes that this request may pose operational concerns. Vessels fishing on a directed dogfish trip, outside of an exempted fishery, must declare a sector trip through VMS or IVR prior to starting their trip. It is currently impossible to distinguish such a trip from a directed groundfish trip. Sector discard rates, a crucial component of ACE monitoring, are calculated based on total catch, not solely groundfish catch. A reduction in monitoring would decrease oversight of and confidence in this crucial calculation. The sector did not address the benefit that this program provides to compliance monitoring.

28. DSM Requirements When a Trip Has Been Monitored by Either an At-Sea Monitor or Fishery Observer

The regulations at § 648.87(b)(1)(v)(B)(3) specify that any DSM service provider must provide coverage that is distributed in a random manner among all trips, thereby accurately observing sector fishing activity.

The Northeast Coastal Communities Sector has requested an exemption from DSM requirements when a trip has been monitored by either an at-sea monitor or fishery observer, noting that requiring both at-sea monitoring and DSM is redundant, as the goal of both programs is catch verification. The sector claims that requiring DSM on trips that also receive monitoring at-sea is overly burdensome for sector members. At its November 18, 2010, meeting, the Council asked NMFS to prioritize DSM for trips that did not receive an at-sea monitor.

29. The Requirement To Delay Offloading Due to the Late Arrival of the Assigned Monitor

The regulations at § 648.87(b)(5)(i)(C) specify that a vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor assigned to that trip is present. The regulations implementing Amendment 16 require each sector to develop, implement, and fund a DSM program, including the selection and hiring of approved monitoring provider(s). Because each sector contracts directly with monitoring provider(s), the sector has the ability, and responsibility, to resolve the late arrival of an assigned monitor directly with its contracted provider(s).

The GB Cod Fixed Gear Sector has requested a partial exemption from the above regulation, allowing vessels to begin offloading catch if a dockside or roving monitor is late. The sector argues that it is the responsibility of the monitor to ensure timely arrival at monitoring events, and that delays have negative social and economic impacts for the sector member being observed, for the dealer, and for other members that must also wait to offload.

This request, however, poses several operational concerns. First, confirming the late arrival of a monitor may be difficult, as it would require verification of the information in the vessel's trip end hail to the dockside monitor. Second, granting this exemption may promote misreporting of the offloading locations in an attempt to delay the arrival of a monitor and avoid monitoring coverage. Additionally, the sector did not address the benefit that this program provides to compliance monitoring.

30. Prohibition on Offloading of Non-Allocated Species Prior to the Arrival of the Monitor

The regulations at § 648.87(b)(5)(i)(C) specify that a vessel may not offload any fish from a trip that was selected to be observed by a dockside/roving monitor until the dockside/roving monitor assigned to that trip is present.

Sustainable Harvest Sectors 1 and 3 have requested an exemption from the prohibition on offloading of non-allocated species prior to the arrival of the monitor, to allow for the offload of non-allocated species prior to the arrival of a monitor. The sectors contend that, on occasion, dealers request vessels to offload non-allocated stocks, such as lobster, prior to the offload of groundfish; this exemption would give additional flexibility to sector members and dealers for the processing of catch. The sectors propose to require their vessels to file VMS catch reports and/or a trip end hail reports prior to crossing the demarcation line to account for total catch. Additionally, the sector proposes to require captains to sign an affidavit stating that no allocated stock was offloaded during these instances. The DSM standards require catch of all stocks to be monitored because sector discard ratios are calculated based on total catch, not groundfish catch only. NMFS is concerned, therefore, that granting this exemption could decrease oversight of, and confidence in, this crucial calculation.

31. Requirement To Provide a Sector Roster to NMFS by the Specified Deadline

The regulations implementing Amendment 16, at § 648.87(b)(2), expanded the requirements for sector operations plan submissions and specified a due date of September 1 to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next FY. The deadline for submitting sector documents is an administrative one, set to ensure sufficient time to comply with all applicable laws. For FY 2011, NMFS extended the deadline for sector rosters to December 1, 2010, in response to industry requests.

The Maine Permit Bank Sector has requested an exemption from the December 1 deadline to allow for additional time to acquire permits. Because membership is a prerequisite to sector formation, the Maine Permit Bank Sector has been notified that it must demonstrate its compliance with minimum membership requirements ("Rule of 3"), but that a list of permits that the State expects to purchase by February 1, 2011 ("bid sheets") would be accepted in the interim. The bid sheet, thus represents a list of permits offered for sale to the Maine Permit Bank Sector by their owners. Similar to vessels on a traditional sector roster, these permits are not bound to the sector for FY 2011 at this time. Since NMFS is accepting bid sheets, it is possible that any permits associated with the permit bank sector could also be on the roster for another sector. Sectors currently account for approximately 99 percent of available ACE, and sectors are free to transfer ACE among each other during the FY. Consequently, the EA has analyzed the impacts of each sector's operations as if 100 percent of ACE

would be harvested by that sector. For permits moving from another sector to the permit bank, the current analysis already accounts for the harvest of this ACE within active sectors. Since current sector rosters account for the vast majority of historic landings, little additional ACE is anticipated to move from the common pool to sectors, based on this exemption. Since the development of permit bank requirements has been a collaborative process, the need for this exemption was not developed until it was clear that Maine would not have finalized the purchase of permits by the December 1 roster deadline. Due to this delay, this exemption is not considered in the draft EA. The final purchase of permits acquired by the Maine Permit Bank Sector must be officially documented to NMFS prior to the publication of the final rule. Setting the deadline for submitting sector documents is an administrative matter. Therefore, this exemption request is being highlighted, but not proposed because NMFS has accommodated the permit bank's needs.

Requested Exemptions Not Being Considered in This Action Because They Are Prohibited or Were Previously Rejected

Exemptions requested by several sectors, ranging from at-sea monitoring provisions, discard rate calculation methods, Eastern U.S./Canada Area requirements, VTR requirements, and NMFS's Office of Law Enforcement (OLE) confidentiality requirements, are either specifically prohibited, or fall outside the NE multispecies regulations. In a letter dated September 1, 2010, NMFS notified the Council that NMFS interprets the reporting requirement exemption prohibition broadly to apply to all monitoring requirements, including at-sea monitoring, DSM, ACE monitoring, and the counting of discards against sector ACE. In this letter, NMFS also requested that the Council define which regulations sectors may not be exempted from. On November 18, 2010, the Council addressed this letter by voting to remove DSM from the list of regulations that sectors may not be exempted from, but did not take such action for at-sea monitoring, ACE monitoring, VTR regulations, or counting of discards against ACE. Northeast Fishery Sectors II, V–X, and XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector requested an exemption from a delayed opening of the Eastern U.S./Canada Area for trawl gear. However, this is a temporary rule that the Regional Administrator has the authority to implement, as specified at § 648.85(a)(3)(iv)(D), to prevent either over-harvesting or to facilitate achieving the Eastern U.S./Canada Area TACs. Additionally, the GB Cod Fixed Gear Sector requested an exemption from OLE confidentiality requirements to receive information about enforcement actions or concerns from OLE within 24 hr; however, this is not controlled by regulations implementing the NE Multispecies FMP. Accordingly, these exemption requests are not proposed in this rule.

As previously stated, Amendment 16 prohibits sectors from requesting exemptions from year-round closed areas, permitting restrictions, gear restrictions designed to minimize habitat impacts, and reporting requirements (excluding DAS reporting requirements).

In addition, sectors requested several exemptions for FY 2011 that were previously disapproved for FY 2010, but failed to provide new information or justification for these exemptions. These include VMS requirements and minimum fish size requirements. The Northeast Fishery Sectors requested a VMS exemption that would allow a central sector server to relay member vessel catch reports and logbook data to NMFS. NMFS previously disapproved this exemption request because of serious concern that interrupting chain of custody of catch information would leave the catch information open to tampering. The Northeast Fishery Sectors provided no new information, justification, rationale, or mitigation to address this concern. Accordingly, this exemption is not proposed in this rule. In addition, the GB Cod Fixed Gear Sector and several of the Northeast Fishery Sectors requested an exemption from the minimum fish size requirements for allocated stocks. This exemption was previously disapproved because it would present significant enforcement issues by allowing two different legal minimum fish sizes in the marketplace and could potentially increase the targeting of juvenile fish. The requesting sectors have provided no new information, justification, rationale, or mitigation to address these concerns.

Sector EA

In order to comply with NEPA, one EA was prepared encompassing all 22 operations plans. The sector EA is tiered from the Environmental Impact Statement (EIS) prepared for Amendment 16. The EA examines the biological, economic, and social impacts unique to each sector's proposed operations, including requested exemptions, and provides a cumulative effects analysis (CEA) that addresses the combined impact of the direct and indirect effects of approving all proposed sector operations plans. The summary findings of the EA conclude that each sector would produce similar effects that have non-significant impacts. Visit *http://www.regulations.gov* to view the EA prepared for the 19 sectors that this rule proposes to approve.

Special Management Program (SMP) Reporting Requirements

Amendment 16 provided the Regional Administrator with the authority to remove SMP-specific reporting requirements if it is determined that the reporting requirements are unnecessary. Consistent with the provisions adopted under Amendment 16, NMFS retained the authority to reinstate such reporting requirements if it is later determined that the weekly sector catch reports are insufficient to adequately monitor catch by sector vessels in SMPs. For FY 2010, the Regional Administrator determined that daily SMP-specific VMS catch reports for vessels participating in sectors are unnecessary, because sectors were allocated ACE for most NE multispecies regulated species and ocean pout stocks and, therefore, would not be subject to any SMP-specific TACs or other restrictions on catch; would be responsible for ensuring that sector allocations are not exceeded; and would provide sufficient information to monitor all sector catch through the submission of weekly sector catch reports. For these same reasons, the Regional Administrator has determined, unless otherwise noted above, that SMP-specific reporting requirements are not necessary to monitor sector catch for FY 2011. This exemption from the SMP reporting requirements for sector vessels would not apply to vessels participating in the Closed Area (CA) I Hook Gear Haddock SAP, as this SAP includes an overall haddock TAC that is applicable to both sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for sector managers to provide daily catch reports by participating sector vessels would be maintained for the CAI Hook Gear Haddock SAP only.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to

further consideration after public comment.

This action is exempt from review under Executive Order (E.O.) 12866.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. The IRFA consists of this section and the **SUMMARY** section of the preamble of this proposed rule, and the EA prepared for this action. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in Sections 1.0, 2.0, and 3.0 of the EA prepared for this action. A summary of the analysis follows. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

Economic Impacts on Regulated Small Entities Enrolled in a Sector

This proposed action would affect regulated entities engaged in commercial fishing for groundfish that have elected to join any one of the 19 proposed sectors that have submitted operations plans for FY 2010. Any limited access Federal permit issued under the NE Multispecies FMP is eligible to join a sector (Table 4). The Small Business Administration (SBA) size standard for commercial fishing (NAICS code 114111) is $4 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross annual sales by commercial fishing vessels were just over $200,000, and no single fishing entity earned more than $2 million annually. Although we acknowledge there are likely to be entities that, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data, we cannot apply the business size standard at this time. Data are currently being compiled on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities in the groundfish fishery for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. As of December 1, 2010, a total of 834 of 1,475 eligible permits elected to join a sector. Table 4 summarizes the number and percent of individual permits currently enrolled in a sector for FY 2011, as well as those predicted to be active. Since individuals may withdraw from a sector at any time prior to the beginning of FY 2011, the number of permits participating in sectors on May 1, 2011, and the resulting sector ACE allocations, are likely to change.

Over the past decade, there has been a significant amount of consolidation in this fishery in response to management measures to end overfishing of, and to rebuild, groundfish stocks. The recent implementation of ACLs and AMs, and the expanded use of sectors under Amendment 16 have affected fishing patterns in ways that cannot yet be quantified and analyzed. Sector measures were intended to provide a mechanism for vessels to pool harvesting resources and consolidate operations in fewer vessels, if desired, and to provide a mechanism for capacity reduction through consolidation. Reasons why fewer vessels have fished thus far this year, in comparison to FY 2009, may be related to owners with multiple vessels fishing fewer vessels, or vessel owners or sectors using quota differently and waiting to fish later in the fishing year to maximize revenue in response to some of the efficiencies gained through the implementation of sector measures in 2010. It is also likely that some vessels that have not landed groundfish have received revenue from leasing their groundfish allocation or have been fishing in other fisheries. Thus, fewer vessels are actively fishing for and landing regulated species and ocean pout stocks, with 10 percent of the fishing vessels earning more than half of the revenues from such stocks since 2005, leading to a seemingly continuing trend of consolidation in the fishery. However, as alluded to above, this trend began before the implementation and expansion of the sector program, and based on limited data available to date, the trend is not significantly out of proportion to fishing years prior to the implementation of Amendment 16. Further, most proposed FY 2011 sectors are anticipating no further consolidation than previously occurred through FY 2010. Five sectors have reported that they anticipate a smaller percentage of permits to harvest groundfish for FY 2011 as compared to FY 2010. Based upon concerns over consolidation raised by the public during the development of Amendment 16, the Council is currently working on a white paper regarding fleet diversity and accumulation limits, and has agreed to develop an amendment to the FMP to address concerns identified.

Joining a sector is voluntary. This means that the decision whether or not to join a sector may be based upon which option—joining a sector or fishing under effort controls in the common pool—offers the greater economic advantage. Since sectors would be granted certain universal exemptions, and may request and be granted additional exemptions from regulatory measures that will apply to common pool vessels, sector vessels would be afforded greater flexibility. Sector members would no longer have groundfish catch limited by DAS allocations and would, instead, be limited by their available ACE. In this manner, the economic incentive changes from maximizing the value of throughput of all species on a DAS to maximizing the value of the sector ACE. This change places a premium on timing of landings to market conditions, as well as changes in the selectivity and composition of species landed on fishing trips.

Unlike common pool vessels, sectors bear the administrative costs associated with preparing an EA, as well as the costs associated with sector management, DSM, and at-sea monitoring. However, FW 45 proposes to change the required coverage level for DSM to the level NMFS is able to fund, up to 100 percent coverage through FY 2012, prioritizing coverage for trips that have not received at-sea or electronic monitoring. The magnitude of the administrative costs for sector formation and operation is estimated to range from $60,000 to $150,000 per sector, and the potential cost for dockside and at-sea monitoring ranges from $13,500 to $17,800 per vessel. These estimates serve to illustrate the fact that the potential administrative costs associated with joining a sector may be expected to influence a vessel owner's decision. The majority of these administrative costs was subsidized by NMFS in FY 2010 and will continue to be subsidized in FY 2011. Whether these subsidies, which include providing financial support for preparation of sector EAs, DSM, and at-sea monitoring, will continue beyond FY 2011 is not known. Nevertheless, these subsidies may make joining a sector a more attractive economic alternative for FY 2011.

The capability to form a sector in the groundfish fishery was first implemented in 2004 through Amendment 13. Prior to FY 2010, there were only two sectors operating and only one sector had been operating continuously from 2004 to 2010. Available data (Table 5) suggest that the economic performance of the two sectors that had been operating prior to FY 2010 was positive. Whether improved profitability experienced by these two sectors will translate into improved performance for all 17 sectors that were implemented during FY2010

is not known since the fishing year is incomplete. Nevertheless, the analysis conducted for Amendment 16 posited that the combination of relief from specific regulations and the incentives to change fishing practices would result in improved ACL utilization compared to TAC use rates while the majority of the groundfish fleet was still operating under DAS controls. Using a straight-line projection approach suggests that for most stocks the use rates for aggregate sector ACLs will be higher than the average observed TAC use rates compared to FY 2007 and FY 2008. This assumes that the average weekly catch rates by sector vessels will remain constant for the remainder of the fishing year. Further, given substantial differences in ACE across sectors and among members within sectors, economic performance may be expected to vary considerably.

TABLE 4—SUMMARY OF THE NUMBER AND PERCENT OF INDIVIDUAL PERMITS AND LIKELY ACTIVE PERMITS CURRENTLY ENROLLED IN A SECTOR FOR FY 2011

Sector	Number of individual permits *	Percent of individual permits	Number of active permits *	Percent of active permits **
Northeast Fishery Sector II	85	5.63	42	50.60
Northeast Fishery Sector III	95	6.44	49	51.58
Northeast Fishery Sector IV	43	2.78	0	0
Northeast Fishery Sector V	34	2.24	27	81.82
Northeast Fishery Sector VI	19	1.29	5	26.32
Northeast Fishery Sector VII	20	1.49	15	68.18
Northeast Fishery Sector VIII	20	1.36	16	80.00
Northeast Fishery Sector IX	60	3.73	22	40.00
Northeast Fishery Sector X	51	3.32	26	53.06
Northeast Fishery Sector XI	47	3.19	21	44.68
Northeast Fishery Sector XII	11	0.75	6	54.55
Northeast Fishery Sector XIII	35	2.37	29	82.86
Fixed Gear Sector	100	6.71	42	42.42
Sustainable Harvest Sector 1	106	7.05	37	35.58
Sustainable Harvest Sector 3	18	1.15	0	0
Port Clyde Sector	40	2.85	24	57.14
Tri-State Sector	19	1.29	9	47.37
Northeast Coastal Community Sector	30	2.03	27	90.00
Maine Permit Bank Sector	†3	0.20	0	0
All Sectors	834	55.66	397	48.36

* Number of permits in each sector is from sector operation plans and EAs submitted as of September 10, 2010.
** In 2010, 453 sector vessels were reported to be active vessels.
† The Maine Permit Bank Sector has submitted a list of prospective permits for purchase and provided verification that it currently consists of two privately held permits, although it must hold a minimum of three permits to be considered for approval. The roster will be finalized prior to publication of the final rule.

TABLE 5—YEAR TO DATE SECTOR CATCHES AND PROJECTED ACL USE RATES FOR FY 2010

Stock	Percent Sector catch as of October 9 (percent)	Sector weekly catch rate	Projected FY10 sector ACL utilization (percent)	2007–2008 average utilization rate (percent)
GB Cod	29	0.01215	63.2	44
GOM Cod	42	0.01766	91.9	69
GB Haddock	8	0.00323	16.8	17
GOM Haddock	13	0.01766	91.9	51
GB Yellowtail Flounder	46	0.01934	100.6	117
SNE/MA Yellowtail Flounder	5	0.00205	10.7	174
CC/GOM Yellowtail Flounder	16	0.00680	35.4	55
Plaice	23	0.00973	50.6	28
Witch Flounder	34	0.01398	72.7	24
GB Winter Flounder	49	0.02037	105.9	48
GOM Winter Flounder	28	0.01147	59.7	NA
Redfish	14	0.00567	29.5	46
White Hake	27	0.01118	58.2	114
Pollock[1]	11	0.00467	24.3	82

[1] The 2010 projection of the Pollock sector use rate is significantly lower than that of the 2008–2009 average. This is because the revised Pollock reference points raised the ACL substantially above the TAC-levels set for either 2007 or 2008.

The proposed action would provide relief from having to comply with specified regulations. These regulatory exemptions include a set of universal exemptions in Amendment 16, as well as the possibility for individual sectors to request additional exemptions. During FY 2010, a number of exemptions were requested by individual sectors. To provide maximum regulatory relief, as well as to reduce the cost of administering, monitoring, and enforcing a unique set of exemptions for each sector, these sector-requested exemptions were

extended to additional sectors for the remainder of FY 2010 through supplemental rulemaking. The exemptions in this rule were analyzed so that they mimicked the universal exemptions; that is, any approvable exemption requested by one sector was approved for all sectors whether it had been requested or not. However, unlike the universal exemptions, any of the sector exemptions approved during FY 2010 must be requested again for FY 2011. The list of these exemptions is included in Section 3.3 and 3.4 of the EA.

Economic Impacts of Exemptions Requested in the Proposed Action

Exemption from the Day gillnet 120-day block out of the fishery requirement is being requested by the GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. Existing regulations require that vessels using gillnet gear remove all gear from the water for 120 days per year. Since the time out from fishing is up to the vessel owner to decide (with some restrictions), many affected vessel owners have purchased more than one vessel such that one may be used while the other is taking its 120-day block out of the groundfish fishery, to provide for sustained fishing income. Acquiring a second vessel adds the expense of outfitting another vessel with gear and maintaining that vessel. The exemption from the 120-day block would allow sector members to realize the cost savings associated with retiring the redundant vessel. Furthermore, this exemption would provide additional flexibility to sector vessels to maximize the utility of other sector-specific and universal exemptions, such as the exemption from the GB Seasonal Closure in May and portions of the GOM Rolling Closure Areas.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the prohibition on a vessel hauling gear that was set by another vessel. The community fixed-gear exemption would allow sector vessels in the Day gillnet category to effectively pool gillnet gear that may be hauled or set by sector members. This provision would reduce the total amount of gear that would have to be purchased and maintained by participating sector members, resulting in some uncertain level of cost savings, along with a possible reduction in total gear fished.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector have requested to be exempt from the limitation on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS. Approving this exemption would increase operational flexibility and provide an opportunity for a substantial portion of the fleet to improve vessel profitability.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, V–VIII, and X–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting an exemption from the limit on the number of nets (not to exceed 150) that may be deployed by Day gillnet vessels. This exemption would provide greater flexibility to deploy fishing gear by participating sector members according to operational and market needs.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the 20-day spawning block out of the fishery requirement. Exemption from the 20-day spawning block would improve flexibility to match trip planning decisions to existing fishing and market conditions. Although vessel owners currently have the flexibility to schedule their 20-day block according to business needs (within a 3-month window) and may use that opportunity to perform routine or scheduled maintenance, vessel owners may prefer to schedule these activities at other times of the year, or may have unexpected repairs. Removing this requirement may not have a significant impact, but would still provide vessel owners with greater opportunity to make more efficient use of their vessel.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the number of hooks that may be fished. These exemptions would provide vessel owners in these sectors with the flexibility to adapt the number of hooks fished to existing fishing and market conditions. This exemption would also provide an opportunity to improve vessel profitability. The exemption from the number of hooks that may be fished has been granted to the GB Cod Hook Sector every year since FY 2004, and was granted to the GB Cod Fixed Gear Sector for FY 2010. Approving this exemption for these additional sectors would extend the potential economic benefits to more vessels in other sectors.

GB Cod Fixed Gear Sector, the Maine Permit Bank Sector, all Northeast Fishery Sectors, the Port Clyde Community Groundfish Sector, Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector request an exemption from regulations that currently limit leasing of DAS to vessels within specified length and horsepower restrictions. Current restrictions create a system in which a small vessel may lease DAS from virtually any other vessel, but is limited in the number of vessels that small vessels may lease to. The opposite is true for larger vessels. Exemption from these restrictions would allow greater flexibility to lease DAS between vessels of different sizes and may be expected to expand the market of potential lessees for some vessels. The efficiency gains of this exemption, if approved, for a requesting sector would be limited because the exemption would only apply to leases within and between sectors requesting this exemption. Since DAS would not be required while fishing for groundfish, the economic importance of this exemption would be associated with the need to use groundfish DAS when fishing in other fisheries, for example, monkfish.

The GOM Sink Gillnet Mesh Exemption is being requested by the GB Cod Fixed Gear Sector; Northeast Fishery Sectors III, VI–VIII, and X–XII; the Port Clyde Community Groundfish Sector; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector. The exemption would allow the use of 6-inch (15.24-cm) mesh gillnets in the GOM RMA from January 1, 2012 through April 30, 2012. This exemption would provide participating sector vessels an opportunity to potentially retain more GOM haddock, a healthy stock, and share in the benefits from the stock recovery. To utilize this exemption, it would be necessary for participating sector vessels to purchase 6-inch (15.24-cm) mesh gillnets. However, it would allow a greater catch of haddock, which may increase revenues for gillnet fishermen and the ports where they land their fish, particularly if participating vessels are able to change fishing behavior to selectively target this stock and minimize catch of other allocated target stocks.

The GB Cod Fixed Gear Sector has requested an exemption from the prohibition on the use of squid or mackerel as bait, or possessing squid or mackerel on board vessels, when participating in the CA I Hook Gear Haddock SAP. Providing relief from the bait restrictions would provide participating sector vessels with greater operational flexibility to choose the bait that best meets fishing circumstances. Participating vessels would also be able to use the bait of their choice, depending on expected catch, as well as the cost of bait.

Sustainable Harvest Sectors 1 and 3 and the Port Clyde Community Groundfish Sector have requested access to specific blocks within the GOM Rolling Closure Areas, specifically blocks 138 and 139 during May and/or access to blocks 139, 145, and 146 during June. These closure areas were selected primarily to reduce fishing mortality on GOM cod at a time of year where catch rates had been observed to be high. Given higher catch per unit effort, sector vessels would be able harvest available ACE at a lower cost, since less fishing time would be required to harvest the same amount of available ACE. Whether this would result in higher profitability is uncertain, since prices during May and June tend to be lower due to larger supplies and somewhat lower quality. During FY 2010 average cod prices have been above their historic average. The price effect of increased supplies of cod entering the market early in the FY is uncertain, but could offset some of the cost savings associated with being able to obtain higher catch rates.

The GB Cod Fixed Gear Sector; Northeast Fishery Sectors II–III, V–VI, and X–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting exemption from the regulations that currently prohibit sector vessels from discarding any legal-size regulated species allocated to sectors. Sector vessels have had to retain legal-size unmarketable fish, which requires them to store this fish on the vessel while at sea, in some cases in large quantities in totes on deck, creating potential unsafe work conditions. In addition, sector vessels have had to determine a method of disposal for any unmarketable fish landed. Anecdotal information indicates that some fish dealers dispose of unmarketable fish for sector vessels as a courtesy; however, the scope of this occurrence and any operational costs incurred by the dealer or vessels is unknown. A partial exemption from this regulation that would allow sector vessels to discard unmarketable fish would provide sector vessels more operational flexibility and improve safety conditions at sea. It would also relieve the burden, if any, on sector vessels and their dealers to find a way to dispose of the unmarketable fish once landed.

Northeast Fishery Sectors III, VI–VIII, and X have requested an exemption from the minimum sink gillnet mesh size in May, thereby extending the proposed GOM Sink Gillnet Mesh Exemption. Assuming approval of the proposed GOM Sink Gillnet Mesh Exemption, this ancillary exemption would provide participating sector vessels an opportunity to achieve higher profitability. Preliminary estimates indicate that about half of the available GOM haddock ACE will not be taken during FY 2010. This does not necessarily mean, however, that a larger share of the GOM haddock ACE will not be taken, as the FY has another five months.

The GB Cod Fixed Gear Sector has also requested an exemption from the requirement that the sector manager submit daily catch reports for the CA I Hook Gear Haddock SAP, proposing instead that members submit daily catch reports directly to NMFS. Eliminating the daily catch reporting by sector managers would provide some administrative relief to the sector. Reporting burden of individual participating vessels would remain unchanged, as they would merely change the recipient of their current daily report. This exemption may result in some cost savings to the operation of any given sector and therefore reduce the transactions costs to all sector members, not only to the individual vessels or sector members that participate in the SAP.

Northeast Fishery Sectors VI–X and XIII have requested an exemption from the prohibition on pair trawling. Pair trawling was originally prohibited because of its higher catch rates and impacts to then declining cod and haddock stocks. Providing an exemption allowing for pair trawling would provide participating sector vessels with greater operational flexibility. However, the high catch rates that resulted from this fishing practice while under DAS management may not be as advantageous under sector management unless the practice can be used to selectively target stocks for which a sector has a comparatively large ACE. That is, characterizing use of pair trawling as highly efficient may be accurate from a technical standpoint, but may not necessarily be economically efficient unless catch rates of stocks with limiting ACE can be reduced or eliminated.

The Northeast Coastal Communities Sector has requested an exemption from the minimum hook size. This exemption may be expected to improve operational flexibility for participating sector vessels. Whether the ability to use alternative hook sizes will translate into improved profitability is uncertain, particularly if the larger hook does select for larger fish, which do tend to fetch a premium price. Nevertheless, the exemption would improve flexibility and may allow delivery of a broader range of fish sizes to final markets.

Northeast Fishery Sectors II, V–X, and XIII have requested an exemption from the trawl minimum mesh size when targeting redfish, a healthy stock. The 6.5-inch (16.51-cm) mesh size has been argued to be too large to catch Acadian redfish in quantities that would permit development of a targeted fishery. The proposed exemption would offer participating sector vessels greater operational flexibility. These sectors propose that the fishery using this exemption would be monitored using 100 percent observer coverage, and would require daily catch reporting to the sector manager. Whether the potential improved catch rates would offset these added costs is uncertain. As long as the at-sea monitoring or observer costs are being subsidized, the only added cost may be the requirement for daily reporting by the sector manager. The extent to which observer costs will continue to be subsidized is unknown, but may need to be taken into account when assessing the potential profitability that developing a targeted redfish fishery may provide.

Northeast Fishery Sectors II, V–X, and XIII have requested an exemption from gear restrictions in the U.S./Canada Management Area, allowing for the use of the 250 × 40-cm Eliminator Trawl ™. This exemption would allow the use of a configuration of an eliminator trawl that differs from what is currently approved for specific areas, including the U.S./Canada Management Area. Allowing this exemption would offer greater operational flexibility, but would still be limited to the areas and conditions under which the current eliminator or Ruhle trawl has already been approved. While this net may be used in open areas, the use of this net is prohibited in the Special Management Program, including the SAPs, and Gear Restricted Areas. This exemption is being requested because the specification for approved gear types for these areas is too large to be utilized by some of the participating sector vessels. The extent to which this exemption may improve economic profitability is uncertain, but may be limited to vessels

that have already purchased the gear, may be able to re-rig existing gear at low cost, and may access the areas where the Ruhle trawl is already approved.

Sustainable Harvest Sectors 1 and 3, and the Tri-State Sector have requested an exemption from the trawl gear requirements in the U.S./Canada Management Area. This exemption would allow the use of any groundfish trawl gear, provided the gear conforms to regulatory requirements for using trawl gear to fish for groundfish in the GB RMA. This exemption would result in greater operational flexibility to participating sector vessels, as these vessels would be able to better harvest allocation of ACE. Whether this would result in increased profitability depends on the ability to achieve cost efficiencies by reducing the amount and type of gear necessary to prosecute the groundfish fishery in the U.S./Canada Management Area and elsewhere, and/or the ability to reduce operating costs if the same amount of ACE can be taken with less fishing time.

The Tri-State Sector has requested an exemption from the requirement to power a VMS while at the dock. Maintaining a VMS signal while at the dock, or tied to a mooring, requires constant power be delivered to the vessel or constant use of onboard generators at all times. These requirements do increase the cost of operating a fishing vessel, whether the vessel is fishing or not. This exemption would provide the opportunity to reduce the overhead costs of maintaining a fishing operation and would result in some improved profitability.

The GB Cod Fixed Gear Sector; the Northeast Coastal Communities Sector; Northeast Fishery Sectors II–III and V–XIII; Sustainable Harvest Sectors 1 and 3; and the Tri-State Sector are requesting complete or partial exemptions from DSM requirements. The cost of DSM for FY 2010 has been subsidized by the NMFS. Based on preliminary data, the overall average cost associated with DSM averaged about $0.02 per landed pound of fish. This estimate is based on an agreed formula between the NMFS and sector managers to calculate reimbursement for DSM services, which includes a per-pound rate of $0.015, $33 per trip monitored, and $27 per trip requiring a roving monitor. The estimated cost per pound landed for monitored trips was based on invoices received by sectors from May–August 2010. However, not all sectors had sent in invoices as of the date the average cost reported herein were estimated, so the actual costs may differ by sector and may be substantially different once the FY has been completed. Using methods similar to that used to estimate expected revenues for the FY 2011 and FY 2012 ACLs (*i.e.,* based on a linear projection of average ACL use rates and average discard rates), the estimated cost for DSM for FY 2010 would be $616,000, or 0.8 percent of estimated FY 2010 revenues. Through Amendment 16, DSM was scheduled to be reduced to 20 percent during FY 2011, and the estimated monitoring cost would be $281,000, or 0.4 percent of the estimated FY 2011 groundfish revenues. The actual overall average DSM cost per pound landed will be zero for any lease-only sectors, and may be higher for sectors with below average landings per trip, since the trip cost gets spread out over fewer pounds. Similarly, the average cost per pound may be lower for sectors with higher than average landings per trip. Granting all or a portion of these exemptions would alleviate all upfront costs associated with this program, as well as the unreimbursed costs for monitoring of other stocks, and therefore provide the opportunity to reduce the overhead costs of operating a fishing vessel, which may result in some improved profitability.

Economic Impacts of the Alternative to the Proposed Action

The objective of sector management, as originally developed and implemented under Amendment 13, and expanded under Amendment 16, is to provide opportunities for like-minded vessel operators to govern themselves so that they can operate in a more effective and efficient manner. Sectors developed the proposed operations plans and prospective members signed binding sector contracts to abide by the measures specified in the proposed operations plan. NMFS is unable to develop additional alternatives because this would require NMFS to develop sector operations plans, which is counter to the intent of sectors, as outlined in Amendment 16. Accordingly, the proposed operations plans reflect the management measures preferred by participating vessels. Therefore, no other alternatives in addition to the No Action and the proposed action were considered. Under the No Action alternative, none of the FY 2011 sector operations plans would be approved, and no sector would be approved to operate in FY 2011. Therefore, no sector would receive a LOA to fish or an allocation to fish. Under this scenario, vessels would remain in the common pool and fish under the common pool regulations. Because of effort control changes made by both Amendment 16 and Framework 44, it is likely that vessels enrolled in a sector for FY 2011 and forced to fish in the common pool would experience revenue losses in comparison to the proposed action. It is more likely under the No Action alternative that the ports and fishing communities where sectors plan to land their fish would be negatively impacted.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on proposed sector operations plans and TAC allocations.

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

Dated: February 22, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–4401 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 39
Monday, February 28, 2011

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

Notice of Public Meeting of the Committee on Administration and Management

AGENCY: Administrative Conference of the United States.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Administrative Conference of the United States will host a public meeting of the Committee on Administration and Management of the Assembly of the Conference on Wednesday, March 16, 2011 from 9 a.m. to 12 noon to consider a draft recommendation concerning the ethics rules applicable to government contractors and their employees. To facilitate public participation, the Administrative Conference is inviting public comment on the recommendation to be considered at the meeting, to be submitted in writing no later than 12 noon on March 15, 2011.

DATES: Meeting to be held March 16, 2011. Comments must be received by 12 noon on March 15, 2011.

ADDRESSES: Meeting to be held at Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036. Submit comments to either of the following:

(1) *E-mail: Comments@acus.gov,* with "Contractor Ethics" in the subject line; or

(2) *Mail:* Contractor Ethics Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Reeve T. Bull, Designated Federal Officer, Administrative Conference of the United States, Suite 706 South, 1120 20th Street, NW., Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States (ACUS) is charged with developing recommendations for the improvement of Federal administrative procedures (5 U.S.C. 591).

The Conference has engaged a Professor of Law at Washington University in St. Louis School of Law, Kathleen Clark, to research and prepare a report regarding whether ethics regulations analogous to those applicable to government employees should apply to government contractors and, if so, how such regulations should be imposed (the "Ethics Report"). A copy of the Ethics Report is available at *http://www.acus.gov.* The Committee on Administration met on November 3, 2010 to discuss the Ethics Report and again on December 9, 2010 to discuss a draft recommendation on expanding the ethics rules applicable to government contractors and their employees.

From 9 a.m. to 12 noon on March 16, 2011, the committee will discuss a revised draft recommendation based on the Ethics Report and on the discussion from the first two meetings. A copy of the draft recommendation will be made available at *http://www.acus.gov* prior to the March 16, 2011 meeting. This meeting will be open to the public and may end prior to 12 noon if business is concluded prior to that time. Members of the public are invited to attend the meeting in person, subject to space limitations, and the Conference will also provide remote public access to the meeting.

Anyone who wishes to attend the meeting in person is asked to RSVP to *Comments@acus.gov.* Remote access information will be posted on the Conference's Web site, *http://www.acus.gov,* by no later than March 14, 2011, and will also be available by the same date by calling the phone number listed above. Members of the public who attend the Committee's meeting may be permitted to speak only at the discretion of the Committee Chair, with unanimous approval of the Committee. The Conference welcomes the attendance of the public and will make every effort to accommodate persons with physical disabilities or special needs. If you need special accommodations due to a disability, please inform the Designated Federal Officer no later than 7 days in advance of the meeting using the contact information provided above.

Members of the public may submit written comments on the report to either of the addresses listed above no later than 12 noon on March 15, 2011. All comments will be delivered to the Designated Federal Officer listed on this notice. The Designated Federal Officer will post all comments that relate to the subject of the meeting after the close of the comments period.

Dated: February 23, 2011.

Jonathan R. Siegel,

Director of Research & Policy.

[FR Doc. 2011–4335 Filed 2–25–11; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0119]

Implementation of Revised Lacey Act Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for information.

SUMMARY: The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to expand its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and require that importers submit a declaration at the time of importation for certain plants and plant products. The Act also requires us to review the implementation of the declaration requirements, and to provide public notice and opportunity for comment while conducting the review. The purpose of this notice is to inform the public that we are conducting the required review and to request comments on the implementation of the declaration requirements.

DATES: We will consider all comments that we receive on or before April 14, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/*

main?main=DocketDetail&d=APHIS-2008–0119 to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2008–0119, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0119.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Staff Officer, Quarantine Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 734–8295.

SUPPLEMENTARY INFORMATION:

Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in "illegal" wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken in violation of any Federal, State, Tribal, or foreign law that protects plants. The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended, made it unlawful, beginning December 15, 2008, to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. Enforcement of the declaration requirement is currently being phased in.[1]

The Act also requires us to review the implementation of the declaration requirements, including the effect of certain exclusions from those requirements, and to provide public notice and opportunity for comment while conducting the review. Furthermore, after we have completed the review, we are required to submit a report to Congress detailing the results of that review. Specifically, the Act directs us to include in the report the following items:

(A) An evaluation of—

(i) The effectiveness of each type of information required under paragraphs (1) through (2) in assisting enforcement of this section; and

(ii) The potential to harmonize each requirement imposed by paragraphs (1) and (2) with other applicable import regulations in existence as of the date of the report;

(B) Recommendations for such legislation as the Secretary determines to be appropriate to assist in the identification of plants that are imported into the United States in violation of this section; and

(C) An analysis of the effect of subsection (a) and this subsection on—

(i) The cost of legal plant imports; and

(ii) The extent and methodology of illegal logging practices and trafficking.

Therefore, we are soliciting information from the public about the implementation of the import declaration requirements. Interested parties are invited to submit comments on the issues stated above and other pertinent issues related to the implementation and enforcement of the 2008 Lacey Act amendments. Information received in response to this notice will be taken into account and included with our analysis of the implementation of the declaration requirements in the report made to Congress. Comments submitted in response to previous notices regarding implementation of the amended Lacey Act will also be taken into account and do not need to be resubmitted.

Authority: 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

[1] Copies of notices published in the **Federal Register** on the implementation of the Lacey Act (including directions on how to view comments received on them), guidance on complying with the Lacey Act, and information about how to register for stakeholder notification can be found on the APHIS Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.*

Done in Washington, DC, this 23rd day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–4357 Filed 2–25–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

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

DATES: *Effective Date:* February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Emily Halle, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2010, the Department of Commerce (the Department) initiated the administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (PRC) covering the period June 1, 2009, through May 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010). The current deadline for the preliminary results of review is March 2, 2011.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary

results of the administrative review of chlorinated isos from the PRC within this time limit. Specifically, due to additional time needed to review the first supplemental questionnaire response and to issue further supplemental questionnaires, we find that additional time is needed to complete these preliminary results. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review from 245 days to 365 days; from March 2, 2011 until June 30, 2011.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4397 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On October 21, 2010, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the antidumping duty administrative review for certain lined paper products from India (CLPP). *See Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 64988 (October 21, 2010) (*Preliminary Results*). This review covers 31 manufacturers and exporters of the subject merchandise.[1] On October 26, 2009, petitioner timely withdrew its request for a review of Blue Bird (India) Limited (Blue Bird). Therefore, we are rescinding this review with respect to Blue Bird.

As a result of our analysis of the comments received, these final results differ from the *Preliminary Results.*

For our final results, we continue to find that Navneet did not make sales of subject merchandise at less than normal value (NV) (*i.e.,* sales were made at *de minimis* dumping margins). We also find that U.S. sales have not been made below NV by Super Impex. In addition, based on the final results for Super Impex, we have determined that the 29 remaining non-selected companies will receive the non-selected respondent rate from the previous review.

DATES: *Effective Date:* February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore (Navneet) and Cindy Robinson (Super Impex), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3692, (202) 482–3797, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 2010, the Department selected Navneet and Super Impex as companies to be individually examined in this administrative review of the antidumping duty order on CLPP from India. *See* Memorandum to Melissa Skinner, Director, Office 3 Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled "Antidumping Duty Administrative Review of Certain Lined Paper Products from India: Selection of Respondents for Individual Review" (Respondent Selection Memo), dated January 29, 2010.

As stated in the *Preliminary Results,* on October 26, 2009, petitioner timely withdrew its request for a review of Blue Bird. Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on October 26, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 54956 (October 26, 2009) (*Initiation Notice*). The petitioner's withdrawal of request for a review of Blue Bird falls within the 90-day deadline for rescission by the Department, and no other party requested an administrative review of this particular respondent. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with our practice, we are rescinding this review with respect to Blue Bird. *See, e.g., Lightweight Thermal Paper from Germany: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 11135 (March 10, 2010).

On October 21, 2010, the Department published the *Preliminary Results.* On October 25, 2010, petitioner submitted additional factual information obtained from the Web site *http://www.cellopapers.com/ruled-plain-papers.html,* pursuant to 19 CFR 351.301(b)(2).

Comments From Interested Parties

We invited parties to comment on our *Preliminary Results.* Case briefs were filed on November 18, 2010, by Super Impex and on November 23, 2010, by petitioner and Navneet. On December 13 and 14, 2010, Super Impex and petitioner, respectively, filed rebuttal briefs.

Scope of the Order

The scope of this order includes certain lined paper products, typically school supplies (for purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic) composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets (there shall be no minimum page requirement for loose leaf filler paper) including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, loose leaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8-3/4 inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or "tear-out" size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with

[1] On September 30, 2009, the Department received a timely request to conduct an administrative review of the following 32 companies: Abhinav Paper Products Pvt. Ltd.; American Scholar, Inc., and/or I–Scholar; Ampoules & Vials Mfg. Co., Ltd.; Bafna Exports; Cello International Pvt. Ltd (M/S Cello Paper Products); Creative Divya; Corporate Stationery Pvt. Ltd.; D.D. International; Exmart International Pvt. Ltd.; Fatechand Mahendrakumar; FFI International; Freight India Logistics Pvt. Ltd.; International Greetings Pvt. Ltd.; Lodha Offset Limited; Magic International Pvt. Ltd.; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Paperwise Inc.; Pioneer Stationery Pvt. Ltd.; Premier Exports; Riddhi Enterprises; SAB International; SAR Transport Systems; Seet Kamal International; Solitaire Logistics Pvt. Ltd. (Eternity Int'l Freight, forwarder on behalf of Solitaire Logistics Pvt. Ltd.); Sonal Printers Pvt. Ltd.; Super Impex; Swati Growth Funds Ltd.; V & M; and Yash Laminates.

tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of this order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of this order are:

- Unlined copy machine paper;
- Writing pads with a backing (including but not limited to products commonly known as "tablets," "note pads," "legal pads," and "quadrille pads"), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper;
- Three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper;
- Index cards;
- Printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap;
- Newspapers;
- Pictures and photographs;
- Desk and wall calendars and organizers (including but not limited to such products generally known as "office planners," "time books," and "appointment books");
- Telephone logs;
- Address books;
- Columnar pads & tablets, with or without covers, primarily suited for the recording of written numerical business data;
- Lined business or office forms, including but not limited to: pre-printed business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books;
- Lined continuous computer paper;
- Boxed or packaged writing stationary (including but not limited to products commonly known as "fine business paper," "parchment paper," and "letterhead"), whether or not containing a lined header or decorative lines;
- Stenographic pads ("steno pads"), Gregg ruled ("Gregg ruling" consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book), measuring 6 inches by 9 inches;

Also excluded from the scope of this order are the following trademarked products:

- Fly ™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly ™ pen-top computer. The product must bear the valid trademark Fly ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- Zwipes ™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes ™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar ®Advance ™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1″ wide elastic fabric band. This band is located 2–3/8″ from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar ®Advance ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).
- FiveStar Flex ™: A notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is 0.019 inches (within normal manufacturing tolerances) and rear cover is 0.028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex ™ (products found to be bearing an invalidly licensed or used trademark are not excluded from the scope).

Merchandise subject to this order is typically imported under headings 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS headings are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Period of Review

The period of review (POR) is September 1, 2008, through August 31, 2009.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the accompanying Issues and Decision Memorandum (I&D Memo), which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the Issues and Decision Memorandum, is attached to this notice as an Appendix. In addition, a complete version of the I&D Memo can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the I&D Memo are identical in content.

Changes Since the Preliminary Results

Based on comments received from the interested parties, we have made the following company-specific changes to Super Impex's margin calculation: (1) The Department relied solely on Blue Bird's financial statement for the year 2008–2009 submitted by Super Impex on July 7, 2010, to calculate the selling expenses and profit ratios for Super Impex; (2) the Department revised its SAS programming language by directly inputting a formula to derive the countervailing duty (CVD) offsets, rather than using the CVD amounts reported by Super Impex; and (3) the Department revised its SAS programming by including commissions as the only direct selling expense in the circumstance of sales adjustment. *See* I&D Memo and the Analysis Memorandum to File through James Terpstra, Program Manager, from Cindy Robinson for Super Impex Regarding "Final Results of Antidumping Duty Administrative Review of Certain Lined Paper Products from India," dated February 18, 2011, for further details.

Final Results of Review

We determine that the following weighted-average margins exist:

Exporter	Weighted average margin (percent)
Navneet Publications (India) Ltd.	0.43 (*de minimis*)
Super Impex	0.28 (*de minimis*)

Review-Specific Average Rate Applicable to the 29 Non-Selected Companies Subject to This Review: Our normal practice is to base this rate on the margins calculated for those companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available. However, in this review, we only have *de minimis* margins for the companies selected for individual review. Accordingly, we determine that the most appropriate margin available for us to use for the non-selected companies in this review is the average of the margins, other than those which are zero, *de minimis,* or based on total facts available, that we found for the most recent period in which there were such margins. Therefore, the margin we have assigned to the 29 non-selected companies for the final results of this administrative review is 1.34 percent.[2] (*Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review* 75 FR 7563 (February 22, 2010).

Exporter	Weighted average margin (percent)
Abhinav Paper Products Pvt. Ltd	1.34
American Scholar, Inc. and/or I–Scholar	1.34
Ampoules & Vials Mfg. Co. Ltd	1.34
Bafna Exports	1.34
Cello International Pvt. Ltd. (M/S Cello Paper Products)	1.34
Corporate Stationary Pvt. Ltd	1.34
Creative Divya	1.34
D.D. International	1.34
Exmart International Pvt. Ltd	1.34
Fatechand Mahendrakumar	1.34
FFI International	1.34
Freight India Logistics Pvt. Ltd	1.34
International Greetings Pvt. Ltd	1.34
Lodha Offset Limited	1.34
Magic International	1.34
Marigold ExIm Pvt. Ltd	1.34
Marisa International	1.34
Paperwise Inc	1.34
Pioneer Stationery Pvt. Ltd	1.34
Premier Exports	1.34
Riddhi Enterprises	1.34
SAB International	1.34
Sar Transport Systems	1.34
Seet Kamal International	1.34
Solitaire Logistics Pvt. Ltd. (Eternity Int'l Freight, forwarder on behalf of Solitaire Logistics Pvt. Ltd.)	1.34
Sonal Printers Pvt Ltd	1.34
Swati Growth Funds Ltd	1.34
V & M	1.34
Yash Laminates	1.34

Assessment Rates

Pursuant to these final results, the Department has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the antidumping margins calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.,* less than 0.50 percent). The Department intends to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954, (May 6, 2003) (*Assessment Policy Notice*). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.,* companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the 3.91 percent all-others rate for India if there is no company-specific rate for an intermediary company(ies) involved in the transaction. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006) (*Lined Paper Orders*). *See also Assessment Policy Notice,* 68 FR at 23954.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for all shipments of CLPP from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rates listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the

[2] This rate is based on the margins calculated for those companies that were selected for individual review, excluding *de minimis* margins or margins based entirely on adverse facts available, in the most recently completed segment of this proceeding.

company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 3.91 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

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

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 18, 2011.

Ronald K Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX I

List of Comments in the Accompanying Issues and Decision Memorandum

Company-Specific Issues

Super Impex

Comment 1: Methodology for Calculations of Interest, Selling, General & Administrative (G&A) Expenses, and Profit
Comment 2: Whether to Include Cello Writing Instruments & Containers Private Ltd. (Cello)'s Financial Data
Comment 3: Financial Statement(s) for Use in Determining Constructed Value (CV) Selling Expenses and Profit
Comment 4: Simple Average versus Weighted Average
Comment 5: Selling Expenses and Circumstances of Sales (COS) Adjustment in a CV Scenario
Comment 6: Calculation of Countervailing Duty (CVD) Adjustment

Navneet

Comment 7: Whether the Department Used the Revised Sales Databases
Comment 8: Navneet's Model Match Sub-Codes
Comment 9: Treatment of Merchandising Expense
Comment 10: Treatment of Negative Dumping Margins (Zeroing)

[FR Doc. 2011–4392 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Extension of Time Limits for the Preliminary Results of Fourteenth Antidumping Duty Administrative Review

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

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; *telephone:* (202) 482–1168 and (202) 482–1167, respectively.

Background

On August 31, 2010, the U.S. Department of Commerce ("Department") published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2009, to June 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 53274 (August 31, 2010). The preliminary results of this review are currently due no later than April 2, 2011.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245 day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245 day period is not practicable for the following reasons. This review requires the Department to gather and analyze a significant amount of information pertaining to the company's sales practices, manufacturing costs, corporate relationships and an examination of a particular market situation allegation filed by petitioners.[1] Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. The preliminary results will now be due no later than August 1, 2011, the first business day following 120 days from the current deadline. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005). The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4394 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part

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

SUMMARY: In response to requests from interested parties, the Department of

[1] Petitioners consist of New World Pasta Company, Dakota Growers Pasta Company, and American Italian Pasta Company.

Commerce (the Department) initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat (crawfish tail meat) from the People's Republic of China (PRC) with respect to various exporters. The period of review is September 1, 2009, through August 31, 2010. The Department is rescinding the review with respect to Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng Hi-King).

DATES: *Effective Date:* February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0665 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1997, we published in the **Federal Register** an antidumping duty order on crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997). On September 1, 2010, we published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on crawfish tail meat from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 53635 (September 1, 2010). On September 30, 2010, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the petitioner, the Crawfish Processors Alliance, requested an administrative review of the order with respect to various exporters of crawfish tail meat from the PRC, including Yancheng Hi-King. On October 28, 2010, in accordance with section 751(a) of the Act and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of an administrative review of the order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010).

Rescission of Review in Part

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, "in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." We received a notice of withdrawal from the petitioner with respect to the review it requested of Yancheng Hi-King within the 90-day time limit. *See* letter from the petitioner dated January 6, 2011. Because we received no other requests for review of Yancheng Hi-King, we are rescinding the review of the order with respect to Yancheng Hi-King. This rescission is in accordance with 19 CFR 351.213(d)(1).

The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importer

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

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: February 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4396 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China

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

SUMMARY: The Department of Commerce (the Department) received requests to conduct an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China (PRC). In addition, the Department received a request to defer the administrative review of one company for one year. The anniversary month of this order is January. In accordance with the Department's regulations, we are initiating this administrative review.

DATES: *Effective Date:* February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey Pedersen, or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2769 and (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests, in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC [1] covering multiple entities. The Department is now initiating an administrative review of the order covering those entities.

Notice of No Exports, Sales, or Entries

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review (POR). If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it must notify the Department within 60 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR.[2] All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005).

[2] Producers or exporters may also fulfill this requirement by submitting a properly filed and timely quantity and value (Q&V) questionnaire response that indicates that the entity or entities had no exports, sales, or entries of subject merchandise during the POR. *See* discussion *infra* providing further information regarding Q&V questionnaires.

must be served on every party on the Department's service list.

Respondent Selection

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2)(B) of the Act permits the Department to examine exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined. Due to the large number of firms for which an administrative review of wooden bedroom furniture has been requested, and the Department's experience regarding the resulting administrative burden of reviewing each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review in accordance with the Act.

In the event that the Department limits the number of respondents for individual examination in the administrative review of wooden bedroom furniture, the Department intends to select respondents based on volume data contained in responses to Q&V questionnaires. Further, the Department intends to limit the number of Q&V questionnaires issued in the review based on U.S. Customs and Border Protection (CBP) data for U.S. imports classified under the Harmonized Tariff Schedule of the United States (HTSUS) headings identified in the scope of the antidumping duty order on wooden bedroom furniture from the PRC. Since the units used to measure import quantities are not consistent across the HTSUS headings identified in the scope of the order on wooden bedroom furniture from the PRC, the Department will limit the number of Q&V questionnaires issued based on the import values in CBP data which will serve as a proxy for import quantities. Parties subject to the review to which the Department does not send a Q&V questionnaire may file a response to the Q&V questionnaire by the applicable deadline if they desire to be included in the pool of companies from which the Department will select mandatory respondents. Parties will be given the opportunity to comment on the CBP data used by the Department to limit the number of Q&V questionnaires issued. We intend to release the CBP data under administrative protective order (APO) to all parties having an APO within seven days of publication of this notice in the **Federal Register**. The Department invites comments regarding CBP data and respondent selection within five days of placement of the CBP data on the record.

In this case, the Department has decided to send Q&V questionnaires to the 21 companies for which reviews were requested with the largest total values of subject merchandise imported into the United States during the POR according to CBP data. The Department will issue the Q&V questionnaire the day after this notice is signed. In addition, the Q&V questionnaire will be available on the Department's Web site at *http://trade.gov/ia/* on the date this notice is signed. The responses to the Q&V questionnaire must be received by the Department by March 15, 2011. Please be advised that due to the time constraints imposed by the statutory and regulatory deadlines for antidumping duty administrative reviews, the Department does not intend to grant any extensions for the submission of responses to the Q&V questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates test, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in this administrative review must complete, as appropriate, either a separate-rate certification or application, as described below. In order to demonstrate separate-rate eligibility, the Department requires entities for which a review was requested and that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the test for obtaining a separate rate through the Separate Rate Certification form which will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register.** In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Notification

This notice constitutes public notification to all firms for which an administrative review of wooden bedroom furniture has been requested and that are seeking separate rate status in that review, that they must submit a timely Separate Rate Application or Certification (as appropriate) as described above, in order to receive consideration for separate-rate status. Firms to which the Department issues a Q&V questionnaire must submit a timely and complete response to the Q&V questionnaire, in addition to a timely and complete Separate Rate Application or Certification in order to receive consideration for separate-rate status. In other words, the Department will not give consideration to any timely Separate Rate Certification or Application made by parties to whom the Department issued a Q&V questionnaire but who failed to respond in a timely manner to the Q&V questionnaire. Exporters subject to the review to which the Department does *not* send a Q&V questionnaire may receive consideration for separate-rate status if they file a timely Separate Rate Application or a timely Separate Rate Certification without filing a response to the Q&V questionnaire. All information submitted by respondents in this administrative review is subject to verification. As noted above, the Separate Rate Certification, the Separate Rate Application, and the Q&V questionnaire will be available on the Department's Web site on the date of publication of this notice in the **Federal Register.**

Request To Defer Review

In their request to be reviewed, Dorbest Limited, Rui Feng Woodwork (Dongguan) Co., Ltd., and Rui Feng Lumber Development (Shenzhen) Co., Ltd. (collectively Dorbest) requested that the Department defer the initiation of the review of Dorbest for one year, pursuant to 19 CFR 351.213(c). Dorbest contends that a one year deferral will result in an efficient use of Departmental resources because it will allow parties to learn whether Dorbest has been excluded from the furniture order based on the final results of redetermination currently before the Court of International Trade in which the Department recalculated a *de minimis* rate for Dorbest for the investigation in this proceeding.[5]

The Department's regulations provide that the Department may defer the initiation of an antidumping duty administrative review, in whole or in part, for one year if: (1) The request for review was accompanied by a request to defer the review; and (2) neither the exporter or producer for which the deferral is requested, the importer of subject merchandise from that exporter or producer, or a domestic interested party objected to the deferral.[6] No parties have objected to the deferral of this review with respect to Dorbest.

The preamble to the Department's regulations states that the Department established the provision for deferring the initiation of an administrative review, in part, to reduce burdens on the Department.[7] We believe that deferring the instant review of Dorbest is not likely to save Departmental resources because it is likely that, in this review, as in every prior administrative review of this order, the Department will find it necessary to limit the number of respondents examined.[8] Accordingly, even if the Department defers Dorbest's administrative review, it will likely still review the same number of respondents, *i.e.,* the maximum number of respondents which its resources will permit.

Finally, we disagree with Dorbest's argument that deferral is appropriate because the results of ongoing litigation from the investigation may make it unnecessary to conduct a review. Resting a decision to defer the review on the possible result of the litigation from the investigation is inappropriate because the result of this litigation, including any appeals, is uncertain and it could take a significant period of time to resolve. In this regard, the Department notes that the redetermination was recently remanded back to the Department for further consideration. *See Dorbest Ltd.* v. *United States,* Slip. Op. 11–14 (CIT Consol. No. 05–00003 February 9, 2011). Furthermore, the Department has previously rejected this argument as a basis for deferring the review.[9] For all these reasons, we have not deferred the instant review with respect to Dorbest.

Initiation of Review:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating an administrative review of the antidumping duty order on wooden bedroom furniture from the PRC with respect to the following companies. We intend to issue the final results of this review not later than January 31, 2012.

	Period to be reviewed
Antidumping Duty Proceeding	
THE PEOPLE'S REPUBLIC OF CHINA:	
Wooden Bedroom Furniture[10] A–570–890	1/1/10–12/31/10
Alexandre International Corp.;* Southern Art Development Ltd.;* Alexandre Furniture (Shenzhen) Co., Ltd.;* Southern Art Furniture Factory*	
Art Heritage International, Ltd.;* Super Art Furniture Co., Ltd.;* Artwork Metal & Plastic Co., Ltd.;* Jibson Industries Ltd.,* Always Loyal International*	
Baigou Crafts Factory of Fengkai*	

[5] *See Dorbest Limited* v. *United States,* Consol. Court No. 05–00003, Slip Op. 10–79 (CIT July 21, 2010): Final Results of Redetermination Pursuant to Remand (November 10, 2011).

[6] *See* 19 CFR 351.213(c)(1)(i) and (ii).

[7] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27317 (May 19, 1997).

[8] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind Review in Part,* 75 FR 5952, 5953 (February 5, 2010) (limiting the respondents examined), unchanged in *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part,* 75 FR 50992 (August 18, 2010).

[9] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews,* 71 FR 17077 (April 5, 2006).

[10] If one of the named companies does not qualify for a separate rate, all other exporters of wooden bedroom furniture from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

	Period to be reviewed
Billy Wood Industrial (Dong Guan) Co., Ltd.;* Great Union Industrial (Dongguan) Co., Ltd.;* Time Faith Ltd.*	
Brother Furniture Manufacture Co., Ltd.	
C.F. Kent Co., Inc.	
C.F. Kent Hospitality, Inc.	
Champion Sun Industries Limited.	
Changshu HTC Import & Export Co., Ltd.*	
Cheng Meng Furniture (PTE) Ltd.;* Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.*	
Chuan Fa Furniture Factory*	
Clearwise Company Limited*	
COE Ltd.*	
Contact Co., Ltd.	
Dalian Huafeng Furniture Co., Ltd.*	
Dalian Huafeng Furniture Group Co., Ltd.	
Decca Furniture Ltd.*	
Denny's Furniture Associates Corp.	
Denny's International Co., Ltd.	
Der Cheng Furniture Co., Ltd.	
Der Cheng Wooden Works.	
Dongguan Bon Ten Furniture Co., Ltd.*	
Dongguan Cambridge Furniture Co.;* Glory Oceanic Co., Ltd.*	
Dongguan Chunsan Wood Products Co., Ltd.	
Dongguan Creation Furniture Co., Ltd.;* Creation Industries Co., Ltd.*	
Dong Guan Golden Fortune Houseware Co., Ltd.	
Dongguan Grand Style Furniture Co. Ltd.;* Hong Kong Da Zhi Furniture Co., Ltd.*	
Dongguan Great Reputation Furniture Co., Ltd.*	
Dongguan Hero Way Woodwork Co., Ltd.;* Dongguan Da Zhong Woodwork Co., Ltd.;* Hero Way Enterprises Ltd.;* Well Earth International Ltd.*	
Dongguan Hua Ban Furniture Co., Ltd.	
Dongguan Huansheng Furniture Co., Ltd.*	
Dongguan Hung Sheng Artware Products Co., Ltd.;* Coronal Enterprise Co., Ltd.*	
Dongguan Kin Feng Furniture Co., Ltd.*	
Dongguan Kingstone Furniture Co., Ltd.;* Kingstone Furniture Co., Ltd.*	
Dongguan Landmark Furniture Products Ltd.*	
Dongguan Liaobushangdun Huada Furniture Factory;* Great Rich (HK) Enterprise Co. Ltd.*	
Dongguan Lung Dong Furniture Co., Ltd.;* Dongguan Dong He Furniture Co., Ltd.*	
Dongguan Mu Si Furniture Co., Ltd.*	
Dongguan Singways Furniture Co., Ltd.*	
DongGuan Sundart Timber Products Co., Ltd.	
Dongguan Sunrise Furniture Co., Ltd.;* Taicang Sunrise Wood Industry Co., Ltd.;* Taicang Fairmount Designs Furniture Co., Ltd.;* Meizhou Sunrise Furniture Co., Ltd.*	
Dongguan Sunrise Furniture Co.;* Taicang Sunrise Wood Industry Co., Ltd.;* Shanghai Sunrise Furniture Co., Ltd.;* Fairmont Designs*	
Dongguan Sunshine Furniture Co., Ltd.*	
Dongguan Yihaiwei Furniture Limited*	
Dongguan Yujia Furniture Co., Ltd.	
Dongying Huanghekou Furniture Industry Co., Ltd.*	
Dorbest Ltd.;* Rui Feng Woodwork Co., Ltd. aka Rui Feng Woodwork (Dongguan) Co., Ltd.* Rui Feng Lumber Development Co., Ltd. aka Rui Feng Lumber Development (Shenzhen) Co., Ltd.*	
Eurosa (Kunshan) Co., Ltd.;* Eurosa Furniture Co., (PTE) Ltd.*	
Ever Spring Furniture Company Ltd.	
Evershine Enterprise Co.	
Fine Furniture (Shanghai) Ltd.*	
Fleetwood Fine Furniture LP.	
Foshan Guanqiu Furniture Co., Ltd.*	
Fujian Putian Jinggong Furniture Co., Ltd.	
Fuzhou Huan Mei Furniture Co., Ltd.*	
Gainwell Industries Limited.	
Garri Furniture (Dong Guan) Co., Ltd.;* Molabile International, Inc.;* Weei Geo Enterprise Co., Ltd.*	
Golden Well International (HK) Ltd.*	
Green River Wood (Dongguan) Ltd.	
Guangdong Gainwell Industrial Furniture Co., Ltd.	
Guangzhou Maria Yee Furnishings Ltd.;* Pyla HK, Ltd.;* Maria Yee, Inc.*	
Hainan Jong Bao Lumber Co., Ltd.;* Jibbon Enterprise Co., Ltd.*	
Hang Hai Woodcraft's Art Factory*	
Hangzhou Cadman Trading Co., Ltd.*	
Hong Kong Jingbi Group.	
Hualing Furniture (China) Co., Ltd.;* Tony House Manufacture (China) Co., Ltd.;* Buysell Investments Ltd.;* Tony House Industries Co., Ltd.*	
Huasen Furniture Co., Ltd.	
Jardine Enterprise, Ltd.*	
Jiangmen Kinwai Furniture Decoration Co., Ltd.*	
Jiangmen Kinwai International Furniture Co., Ltd.*	
Jiangsu Dare Furniture Co., Ltd.*	

	Period to be reviewed
Jiangsu Weifu Group Fullhouse Furniture Mfg. Corp.*	
Jiangsu Xiangsheng Bedtime Furniture Co., Ltd.*	
Jiangsu Yuexing Furniture Group Co., Ltd.*	
Jiant Furniture Co., Ltd.	
Jiedong Lehouse Furniture Co., Ltd.*	
King Kei Trading Company Limited.	
King's Way Furniture Industries Co., Ltd.	
Kingsyear Ltd.	
Kuan Lin Furniture (Dong Guan) Co., Ltd.;* Kuan Lin Furniture Factory;* Kuan Lin Furniture Co., Ltd.*	
Kunshan Lee Wood Product Co., Ltd.*	
Kunshan Summit Furniture Co., Ltd.*	
Langfang Tiancheng Furniture Co., Ltd.*	
Leefu Wood (Dongguan) Co., Ltd.;* King Rich International, Ltd.*	
Link Silver Ltd. (V.I.B.);* Forward Win Enterprises Company Limited;* Dongguan Haoshun Furniture Ltd.*	
Locke Furniture Factory;* Kai Chan Furniture Co., Ltd.;* Kai Chan (Hong Kong) Enterprise Ltd.;* Taiwan Kai Chan Co., Ltd.*	
Longkou Huangshan Furniture Factory.	
Longrange Furniture Co., Ltd.*	
Meikangchi (Nantong) Furniture Company Ltd.*	
MoonArt Furniture Group.	
MoonArt International Inc.	
Nanhai Baiyi Woodwork Co., Ltd.*	
Nanhai Jiantai Woodwork Co., Ltd;* Fortune Glory Industrial Ltd. (H.K. Ltd.)*	
Nanjing Jardine Enterprise, Ltd.	
Nanjing Nanmu Furniture Co., Ltd.	
Nantong Dongfang Orient Furniture Co., Ltd.*	
Nantong Wangzhuang Furniture Co., Ltd.	
Nantong Yangzi Furniture Co., Ltd.*	
Nantong Yushi Furniture Co., Ltd.*	
Nathan International Ltd.;* Nathan Rattan Factory.*	
Ningbo Techniwood Furniture Industries Limited.	
Ningbo Fubang Furniture Industries Limited.	
Ningbo Furniture Industries Company Ltd.	
Northeast Lumber Co., Ltd.	
Passwell Wood Corporation.	
Perfect Line Furniture Co., Ltd.*	
Pleasant Wave Limited* Passwell Corporation*	
Prime Wood International Co., Ltd;* Prime Best International Co., Ltd.;* Prime Best Factory;* Liang Huang (Jiaxing) Enterprise Co., Ltd.*	
Putian Jinggong Furniture Co., Ltd.*	
Qingdao Liangmu Co., Ltd.*	
Restonic (Dongguan) Furniture Ltd.;* Restonic Far East (Samoa) Ltd.*	
Rizhao Sanmu Woodworking Co., Ltd.*	
S.Y.C. Family Enterprise Co., Ltd.	
Season Furniture Manufacturing Co.;* Season Industrial Development Co.*	
Sen Yeong International Co., Ltd.;* Sheh Hau International Trading Ltd.*	
Senyuan Furniture Group.	
Shanghai Aosen Furniture Co., Ltd.	
Shanghai Fangjia Industry Co., Ltd.*	
Shanghai Hospitality Product Mfg., Co., Ltd.	
Shanghai Industries Group.	
Shanghai Jian Pu Export & Import Co., Ltd.*	
Shanghai Kent Furniture Co., Ltd.	
Shanghai Maoji Imp and Exp Co., Ltd.*	
Shanghai Season Industry & Commerce Co., Ltd.	
Shanghai Zhiyi (Jiashun) Furniture Co., Ltd.	
Shanghai Zhiyi Furniture and Decoration Co., Ltd.	
Shaoxing Mengxing Furniture Co., Ltd.	
Sheng Jing Wood Products (Beijing) Co., Ltd.;* Telstar Enterprises Ltd.*	
Shenyang Shining Dongxing Furniture Co., Ltd.*	
Shenzhen Forest Furniture Co., Ltd.*	
Shenzhen Jiafa High Grade Furniture Co., Ltd.;* Golden Lion International Trading Ltd.*	
Shenzhen New Fudu Furniture Co., Ltd.*	
Shenzhen Shen Long Hang Industry Co., Ltd.*	
Shenzhen Wonderful Furniture Co., Ltd.*	
Shenzhen Xiande Furniture Factory*	
Shing Mark Enterprise Co., Ltd.;* Carven Industries Limited (BVI);* Carven Industries Limited (HK);* Dongguan Zhenxin Furniture Co., Ltd.;* Dongguan Yongpeng Furniture Co., Ltd.*	
Shun Feng Furniture Co., Ltd.*	
Songgang Jasonwood Furniture Factory;* Jasonwood Industrial Co., Ltd. S.A.*	
Starwood Furniture Manufacturing Co., Ltd.	
Starwood Industries Ltd.*	
Strongson Furniture (Shenzhen) Co., Ltd.;* Strongson Furniture Co., Ltd.;* Strongson (HK) Co.*	

	Period to be reviewed
Sundart International, Ltd. Sunforce Furniture (Hui-Yang) Co., Ltd.;* Sun Fung Wooden Factory;* Sun Fung Co.;* Shin Feng Furniture Co., Ltd.;* Stupendous International Co., Ltd.* Superwood Co., Ltd.;* Lianjiang Zongyu Art Products Co., Ltd.* Tarzan Furniture Industries Ltd.;* Samso Industries Ltd.* Techniwood (Macao Commercial Offshore) Limited Techniwood Industries Ltd.;* Ningbo Furniture Industries Limited;* Ningbo Hengrun Furniture Co. Ltd.* Tianjin Fortune Furniture Co., Ltd.* Tianjin Master Home Furniture.* Tianjin Phu Shing Woodwork Enterprise Co., Ltd.* Tradewinds Furniture Ltd.;* Fortune Glory Industrial Ltd. (H. K. Ltd.)* Tradewinds International Enterprise Ltd. Transworld (Zhang Zhou) Furniture Co., Ltd.* Trendex Industries Ltd. Tube-Smith Enterprise (Zhangzhou) Co., Ltd.;* Tube-Smith Enterprise (Haimen) Co., Ltd.;* Billionworth Enterprises Ltd.* U-Rich Furniture (Zhangzhou) Co., Ltd.;* U-Rich Furniture Ltd.* Wan Bao Chen Group Hong Kong Co., Ltd. Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd.;* Dongguan Wanengtong Industry Co., Ltd.* Wanvog Furniture (Kunshan) Co., Ltd.* Winny Overseas, Ltd.;* Zhongshan Winny Furniture Ltd.;* Winny Universal Ltd.* Woodworth Wooden Industries (Dong Guan) Co., Ltd.* World Design International Co., Ltd. Xiamen Yongquan Sci-Tech Development Co., Ltd.* Xilinmen Furniture Co., Ltd. Xingli Arts & Crafts Factory of Yangchun. Yeh Brothers World Trade, Inc.* Yihua Timber Industry Co., Ltd.;* Guangdong Yihua Timber Industry Co., Ltd.* Yuexing Group Co., Ltd. Zhang Zhou Sanlong Wood Product Co., Ltd.* Zhangjiagang Daye Hotel Furniture Co., Ltd.* Zhangjiagang Zheng Yan Decoration Co., Ltd.* Zhangjiang Sunwin Arts & Crafts Co., Ltd.* Zhangzhou Guohui Industrial & Trade Co., Ltd.* Zhejiang Shaoxing Huaweimei Furniture Co., Ltd. Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.* Zhong Shan Fullwin Furniture Co., Ltd.* Zhong Shan Heng Fu Furniture Co. Zhongshan Fengheng Furniture Co., Ltd. Zhongshan Fookyik Furniture Co., Ltd.* Zhongshan Gainwell Furniture Co., Ltd.* Zhongshan Golden King Furniture Industrial Co., Ltd.* Zhongshan Yiming Furniture Co., Ltd. Zhoushan For-Strong Wood Co., Ltd.*	

*These companies received a separate rate in the most recent segment of this proceeding in which they participated.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to the administrative review of the antidumping duty order on wooden bedroom furniture from the PRC being initiated through this notice. Parties that wish to participate in the antidumping duty administrative review of wooden bedroom furniture from the PRC should ensure that they meet the requirements in these procedures (*e.g.,* the filing of separate letters of appearance as discussed in 19 CFR 351.103(d)).

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: February 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4314 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 11–00001]

Export Trade Certificate of Review

ACTION: Notice of Application (#11–00001) for an Export Trade Certificate of Review for the Latin American

Multichannel Advertising Council ("LAMAC").

SUMMARY: The Office of Competition and Economic Analysis, International Trade Administration, U.S. Department of Commerce, received an application for an Export Trade Certificate of Review ("Certificate") on February 3, 2011. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 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 (15 U.S.C. 4012(b)(1)) 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. Under 15 CFR 325.6(a), any interested party may, within twenty days after the date of publication of this notice, submit written comments to the Secretary on the application.

SUMMARY OF THE APPLICATION: *Applicant:* Latin American Multichannel Advertising Council ("LAMAC"), 1000 North Hiatus Road, Suite 203, Pembroke Pines, FL 33026; *Contact:* Ronald A. Oleynik, Counsel; *Telephone:* (202) 457–7183; *Application No.:* 11–00001; *Date Deemed Submitted:* February 10, 2011; *Members:* Discovery Latin America, LLC; Fox Latin American Channel, Inc.; NGC Networks Latin America, LLC; Turner Broadcasting System Latin America, Inc.; A&E Mundo, LLC; History Channel Latin America, LLC; and E! Entertainment Television Latin America Partners, L.P.

The applicant (LAMAC) seeks an Export Trade Certificate of Review to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

I. Export Trade

Distribution of Pay TV channel programming and ancillary rights (cable television rights, broadcast or satellite television rights, copyrights and neighboring rights, etc.), referred to in LAMAC's application as "Distribution Rights."

II. Export Markets

Latin America, including Mexico, the Caribbean, Central America, and South America.

III. Export Trade Activities and Methods of Operation

With respect to Export Trade in the Export Markets, LAMAC seeks a Certificate of Review for it and/or one or more of its Members to engage in activities related to:

1. Exchange of information among LAMAC Members regarding all aspects of foreign market conditions and customers;

2. Collection and dissemination among LAMAC Members of foreign market research information and analysis;

3. Negotiation and agreement with foreign entities (audience data providers and advertisers) to reduce trade barriers and expand markets;

4. Development and recommendation of common business models to reduce foreign trade barriers and expand markets;

5. Entering into, termination, amendment, or enforcement of exclusive agreements to provide, produce, negotiate, contract, and administer Export Trade and Export Trade Facilitation Services;

6. Entering into, termination, amendment, or enforcement of territorial and customer restraints regarding the sale, licensing and/or transfer of title of its export services into the Export Markets;

7. Entering into, termination, amendment, or enforcement of exclusive or non-exclusive agreements for the tying of Distribution Rights and the setting of prices for Distribution Rights in the Export Markets;

8. Refusal to deal with, or to provide quotations (to, non-Members) regarding export Distribution Rights into the Export Markets;

9. Provide accounting, tax, legal and consulting assistance and services to LAMAC Members; and

10. Engaging in joint promotional activities aimed at developing Export Markets.

IV. Terms and Conditions

1. In engaging in Export Trade Activities and Methods of Operation, LAMAC will not intentionally disclose, directly or indirectly, to any Member any information about any other Member's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. LAMAC will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Members (Within the Meaning of 15 CFR § 325.2(l))

Member means a person or entity that has membership in LAMAC and that has been named in the Certificate as a "Member" within the meaning of 15 CFR 325.2(l).

1. Discovery Latin America, LLC, 6505 Blue Lagoon Drive, Miami, Florida 33126.

2. Fox Latin American Channel, Inc., 1140 Sepulveda Boulevard, Third Floor, Los Angeles, California 90025.

3. NGC Networks Latin America, LLC, 1145 17th Street, NW., Washington, DC 20036.

4. Turner Broadcasting System Latin America, Inc., One CNN Center, 12th SW., Atlanta, Georgia 30303.

5. A&E Mundo, LLC, 2525 Ponce de Leon, Suite 250, Coral Gables, Florida 33134.

6. History Channel Latin America, LLC, 2525 Ponce de Leon, Suite 250, Coral Gables, Florida 33134.

7. E! Entertainment Television Latin America Partners, L.P., 2525 Ponce de Leon, Suite 250, Coral Gables, Florida 33134.

Dated: February 22, 2011.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2011–4326 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA246

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 21 Highly Migratory Species (HMS) of sandbar, dusky, and blacknose sharks assessment webinar.

SUMMARY: The SEDAR 21 assessments of the HMS of sandbar, dusky, and blacknose sharks will consist of a series of workshops and webinars: A Data Workshop, a series of Assessment webinars, and a Review Workshop. *See* **SUPPLEMENTARY INFORMATION.**

DATES: A SEDAR 21 Assessment Process webinar will be held on Tuesday, March 15, 2011 from 10 a.m. to approximately 2 p.m. (Eastern). The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie Neer at SEDAR (*See* **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information.

FOR FURTHER INFORMATION CONTACT: Julie A Neer, SEDAR Coordinator, 4055 Faber Place, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop, (2) Assessment Process utilizing webinars and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and State and Federal agencies. SEDAR 21 Assessment webinar:

Using datasets recommended from the Data Workshop, participants will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) at least 10 business days prior to the meeting.

Dated: February 22, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4297 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA242

Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to review fishery management plan (FMP) amendments under development, review stock assessments of spiny lobster and Goliath grouper, and discuss data available for supporting fishing level recommendations. The meeting will be held in North Charleston, SC.

DATES: The meeting will be held April 5–7, 2011. *See* **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (843) 744–4422; fax: (843) 744–4472.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366; e-mail: *Kim.Iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss several FMP amendments, recently completed assessments for spiny lobster and Goliath grouper, and review data to support fishing level recommendations.

Meeting Schedule

April 5, 2011, 9 a.m.–6 p.m.
April 6, 2011, 9 a.m.–6 p.m.
April 7, 2011, 9 a.m.–3 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action

will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see* **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: February 23, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4337 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA251

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Groundfish Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, March 17, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Crowne Plaza, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500; fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to develop Framework Adjustment 46 (FW 46) to the Northeast Multispecies Fishery Management Plan, continue the discussion on an accumulation limits amendment, and begin preparations for a review of the first year of sector operations. FW 46 will consider modifying the provisions of the current haddock catch cap for the herring fishery.

The Committee will develop the specific details for three broad management options that were approved by the Council in January, 2011. Once the specific measures are developed, the framework document will be completed and brought to the Council for a decision at the April 2011 Council meeting. The Committee will also discuss possible management measures to protect cod in southern New England. The Committee may also discuss changes to Transboundary Management Guidance Committee operational procedures. The Committee will discuss goals and objectives for an amendment that may consider adopting accumulation limits and/or ownership caps for the multispecies fishery. Committee members will also begin to plan a review of the first year of operations under sectors; that review is anticipated. Other business may also be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: February 23, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–4338 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board (SAB); Notice of Open Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

TIME AND DATE: The meeting will be held Wednesday, March 9, 2011, from 9:45 a.m. to 5:30 p.m. and Thursday, March 10, 2011, from 8:30 a.m. to 2:30 p.m. These times and the agenda topics described below are subject to change. Please refer to the Web page *http://www.sab.noaa.gov/Meetings/meetings.html* for the most up-to-date meeting agenda.

PLACE: The meeting will be held at the Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Please check the SAB Web site *http://www.sab.noaa.gov* for confirmation of the venue and for directions.

STATUS: The meeting will be open to public participation with a 30-minute public comment period on March 9 at 5 p.m. (check Web site to confirm time). The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments should be received in the SAB Executive Director's Office by March 1, 2011 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 1, 2011 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Seats will be

available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) SAB Ecosystem Sciences and Management Working Group Report on Coastal and Marine Spatial Planning; (2) Discussion of NOAA and SAB Activities on Ocean Policy and Coastal and Marine Spatial Planning; (3) SAB Data Archive and Access Requirements Working Group Report; (4) Update of the SAB Working Group Subcommittee; (5) NOAA Response to the SAB Recommendations on Implementing Integrated Ecosystem Assessments; (6) NOAA Response to the SAB Recommendations on Integrated Ecosystem Assessments, the Ecosystem Approach to Management and Coastal and Marine Spatial Planning; (7) NOAA Response to the SAB Recommendations on Oceans and Human Health; (8) Presentation on NOAA's Space Weather Program; (9) Connecting Climate and Ecosystems: Progress and Challenges and (10) Updates from SAB Working Groups.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–734–1156, *Fax:* 301–713–1459, *E-mail: Cynthia.Decker@noaa.gov;* or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: February 22, 2011.

Mark E. Brown,

Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–4354 Filed 2–25–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for Grow the Army (GTA) Actions at Fort Lewis and the Yakima Training Center (YTC), Washington

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Executive Director of the Army's Installation Management Command (IMCOM) has reviewed the Final Environmental Impact Statement (FEIS) for implementing Army GTA decisions at Fort Lewis and YTC and has made the decision to proceed with implementing the Preferred Alternative for the Proposed Action. The Preferred Alternative has several components that consist of stationing up to 1,900 Soldiers at Fort Lewis to implement GTA stationing decisions, the potential stationing of up to approximately 1,000 additional combat service support (CSS) Soldiers, and the potential stationing of a Combat Aviation Brigade (CAB) of up to 2,800 Soldiers. If all stationing components are implemented, the Preferred Alternative would station up to 5,700 Soldiers, along with their Families, at Fort Lewis. Soldiers stationed at Fort Lewis as part of this decision would train at Fort Lewis and YTC. This alternative is summarized in the Army's ROD and described fully in Chapter 2 of the FEIS.

ADDRESSES: Questions or comments regarding the ROD should be forwarded to: Directorate of Public Works, *Attention:* Environmental (Mr. Paul T. Steucke, Jr.), Building 2012 Liggett Avenue, Box 339500 MS 17, Joint Base Lewis-McChord, WA 98433–9500.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Van Hoesen, Joint Base Lewis-McChord National Environmental Policy Act (NEPA) Coordinator, at (253) 966–1780 during normal business hours.

SUPPLEMENTARY INFORMATION: The ROD incorporates analyses contained in the FEIS, including comments provided during formal comment and review periods. The ROD discusses the ability of each alternative to meet the Purpose and Need for the Proposed Action and outlines environmental mitigation commitments the Army will implement as part of this decision. The preferred alternative was selected as it is best able to meet the Army's mission training and operational requirements while supporting the Army's responsibility for protecting and sustaining the environment. The stationing of CSS units and/or a CAB are actions that the Army may implement in the future. Currently, the Army is completing a programmatic environmental analysis of suitable installations for CAB stationing that may result in the assignment of additional aviation units at Fort Lewis. As part of that CAB stationing evaluation, the Army considered the stationing of a full CAB equivalent of Soldiers and equipment; however, consideration is being given to stationing approximately half that total (up to 1,400 new Soldiers and their equipment). This more limited CAB stationing would provide a CAB training capability at Fort Lewis that would complement Active Army aviation units already stationed there. A final decision on the CAB stationing will be made as part of a separate decision process by the Army.

This ROD documents the decision to proceed with the stationing of 1,900 GTA Soldiers at Fort Lewis, and the decision about where the facilities for the CSS and CAB units could be located on the installation, what and where the training may be conducted, and what impacts or effects are anticipated. Construction and training to support CSS and CAB stationing would proceed in the future if the Army decided to station all or some of these Soldiers at Fort Lewis.

On February 1, 2010, Fort Lewis, Yakima Training Center, and McChord Air Force Base were designated a joint base and renamed Joint Base Lewis-McChord (JBLM); however, the terms Fort Lewis, and Yakima Training Center (YTC) are retained in the EIS and ROD and will be used until the EIS process is complete.

A rationale for the decision can be found in the ROD which is available for public review at *http://www.lewis.army.mil/publicworks/sites/envir/EIA_2.htm.*

Dated: February 17, 2011.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health.

[FR Doc. 2011–4332 Filed 2–25–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 30, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: February 23, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title of Collection: Survey on the Use of Funds under Title II, Part A (Improving Teacher Quality State Grants—Subgrants to Local Educational Agencies (LEAs)).

OMB Control Number: 1810–0618.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 850.

Total Estimated Annual Burden Hours: 4,600.

Abstract: The Elementary and Secondary Education Act of 1965, as amended, provides funds to districts to improve the quality of their teaching and principal force and raise student achievement. These funds are provided to districts through Title II, Part A (Improving Teacher Quality State Grants—Subgrants to LEAs). The purpose of this survey is for the U.S. Department of Education to have a better understanding of how districts use these funds. The survey also collects information on high-quality professional development in LEAs. In addition to the LEA survey, the package also includes a short survey for State Educational Agencies (SEA) that provides information on fiscal year allocations of Title II, Part A funds made to the LEAs selected for participation in the LEA survey. This Office of Management and Budget clearance request is to continue these analyses using a similar data collection instrument and sampling plan for the 2011–2012 school year and subsequent years. Minor changes to the LEA survey are requested. No changes to the SEA survey are required.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4473. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–4390 Filed 2–25–11; 8:45 am]

BILLING CODE 4000–01–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: ER10–2474–001; ER10–2475–001.

Applicants: Sierra Pacific Power Company, Nevada Power Company

Description: Change in Status Notice of Sierra Pacific Power Company and Nevada Power Company.

Filed Date: 02/18/2011.

Accession Number: 20110218–5090.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2178–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35: Compliance to Addition of 3 transmission projects to CWIP Rate Making Mechanism to be effective 1/1/2011.

Filed Date: 02/18/2011.

Accession Number: 20110218–5021.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2907–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii: PacifiCorp Energy Facilities Maintenance Agreement (Hunter) to be effective 1/28/2011.

Filed Date: 02/17/2011.

Accession Number: 20110217–5099.

Comment Date: 5 p.m. Eastern Time on Thursday, March 10, 2011.

Docket Numbers: ER11–2908–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 02–17–11 Supp. Res. to be effective 4/19/2011 under ER11–2908–000 Filing Type: 10.

Filed Date: 02/17/2011.

Accession Number: 20110217–5102.

Docket Numbers: ER11–2909–000.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits tariff filing per 35.13(a)(2)(iii: AP 15 2011 Rate Case Filing to be effective 4/19/2011.

Filed Date: 02/18/2011.

Accession Number: 20110218–5033.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2910–000.

Applicants: Midwest Independent Transmission System, MidAmerican Energy Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: MidAmerican-Ames WDS Filing (2) to be effective 4/1/2011.

Filed Date: 02/18/2011.

Accession Number: 20110218–5034.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2911–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: SGIA Between Niagara Mohawk and U.S. Gypsum to be effective 1/27/2011.

Filed Date: 02/18/2011.

Accession Number: 20110218–5035.

Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2912–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: MR1 FCM Maintenance Allotment Values to be effective 5/1/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5063.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2913–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Credit-Limit Offers to be effective 4/20/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5064.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2914–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: GRE–NSP–Lyon T–T Filing to be effective 2/19/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5065.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2915–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: GRE–NSPM–Pilot Knob T–T to be effective 2/19/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5067.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2916–000.
Applicants: Southwest Power Pool, Inc.
Description: Submission of Notice of Cancellation of Large Generator Interconnection Agreement of Southwest Power Pool, Inc.
Filed Date: 02/18/2011.
Accession Number: 20110218–5086.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2917–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 02–18–11 Schedule 31 annual update to be effective 4/20/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5087.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2918–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: City of Paris Amended and Restated Service Agreement to be effective 4/19/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5112.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2919–000.
Applicants: PJM Interconnection, L.L.C., Appalachian Power Company
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: AEPSC filed a 24th revision to the AEPSC & Buckeye ILDSA under SA #1336 to be effective 2/21/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5115.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Docket Numbers: ER11–2920–000.
Applicants: Consolidated Edison Company of New York,
Description: Consolidated Edison Company of New York, Inc. submits tariff filing per 35.13(a)(2)(iii: Amendment DR for Rider U to be effective 2/19/2011.
Filed Date: 02/18/2011.
Accession Number: 20110218–5130.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR10–11–003.
Applicants: North American Electric Reliability Corporation.
Description: Compliance Filing of the North American Electric Reliability Corporation in Response to October 21 2010 Commission Order.
Filed Date: 02/18/2011.
Accession Number: 20110218–5100.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4318 Filed 2–25–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9271–2; Docket ID No. EPA–HQ–ORD–2011–0187]

Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-Stressor Vulnerability Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing the release of the draft report titled, "Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments" (EPA/600/R–11/011) and a 45-day public comment period for the report. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development.

This draft report investigates the issues and challenges associated with identifying, calculating, and mapping indicators of the relative vulnerability of water quality and aquatic ecosystems, across the United States, to the potential impacts of global change. Using a large set of environmental indicators drawn from the scientific and management literature, this draft report explores the conceptual and practical challenges associated with using such indicators to assess how the resilience of ecosystems and human systems may vary as a function of existing stresses and maladaptations.

The public comment period and the external peer review are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer reviewers for their consideration prior to the finalization of their review comments. When finalizing the draft document, EPA intends to consider any public comments that EPA receives in accordance with this notice.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

The draft document and EPA's peer review charge are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 45-day public comment period begins February 28, 2011, and ends April 14, 2011. Technical comments should be in writing and must be received by EPA by April 14, 2011.

ADDRESSES: The draft "Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments" is available primarily via the Internet on the National Center for Environmental Assessments home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, "Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments." The EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198; facsimile: 301–604–3408; e-mail: *nscep@bps-lmit.com*. Please provide your name, your mailing address, the title, and the EPA number of the requested publication.

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Chris Weaver, NCEA; telephone: 703–347–8621; facsimile: 703–347–8694; or e-mail: *weaver.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

This draft report investigates the issues and challenges associated with identifying, calculating, and mapping indicators of the relative vulnerability of water quality and aquatic ecosystems, across the United States, to the potential adverse impacts of external forces such as long-term climate and land-use change. The draft does not directly evaluate the potential impacts of global change on ecosystems and watersheds. Rather, it explores the implications of the assumption that a systematic evaluation of the impacts of existing stressors will be a key input to any comprehensive global change vulnerability assessment, as the impacts of global change will be expressed via (perhaps complex) interactions with such stressors. This is an assumption with an impressive pedigree, but, to date, there has been relatively little exploration of the practical challenges associated with assessing how the resilience of ecosystems and human systems in the face of global change may vary as a function of existing stresses and maladaptations. The work described in this draft report is a preliminary attempt at such an exploration.

This draft report takes as its starting point more than 600 indicators of water quality and aquatic ecosystem condition, along with numerous datasets from EPA, other Federal agencies, and other organizations, as a testbed for identifying challenges and best practices (as well as gaps in ideas, methods, data, and tools) for calculating and mapping vulnerability nationally. Specifically:

- Challenges associated with identifying those indicators that speak specifically to "vulnerability" as opposed to those reflecting simply a state or condition;
- Challenges associated with calculating and estimating the values of these vulnerability indicators, including establishing important indicator thresholds that reflect abrupt or large changes in the vulnerability of water quality or aquatic ecosystems;
- Challenges associated with mapping these vulnerability indicators nationally, including data availability and spatial aggregation of the data;
- Challenges associated with combining and compositing indicators and developing multi-indicator indices of vulnerability.

This draft report is intended to be one building block for future work on multi-stressor global change vulnerability assessments. It is hoped that it will contribute to improved links between the decision support needs of the water quality and aquatic ecosystem management communities and the priorities and capabilities of the global

change science data and modeling communities.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2011–0187, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0187. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: February 17, 2011.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–4375 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9272–3; Docket ID No. EPA–HQ–ORD–2011–0050]

Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period and availability of the first external review draft of a document titled, "First External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants" (EPA/600/R–10/076A). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for ozone.

EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public (meeting date and location to be specified in a separate **Federal Register** notice). The draft document does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. EPA will consider any public comments submitted in response to this notice when revising the document.

DATES: The public comment period begins February 28, 2011, and ends April 29, 2011. Comments must be received by April 29, 2011.

ADDRESSES: The "First External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants" will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Debbie Wales by phone (919–541–4731), fax (919–541–5078), or e-mail (*wales.deborah@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, "First External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants" (EPA/600/R–10/076A) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. James Brown, NCEA; telephone: 919–541–0765; facsimile: 919–541–1818; or e-mail: *Brown.James@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *." Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each

pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Ozone (O_3) is one of six principal (or "criteria") pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On Sep 29, 2008 (73 FR 56581), EPA formally initiated its current review of the air quality criteria for ozone, requesting the submission of recent scientific information on specified topics. A draft of EPA's "Integrated Review Plan for the Ozone National Ambient Air Quality Standards Review" (EPA/452/P–09/001) was made available in September 2009 for public comment and was discussed by the CASAC via a publicly accessible teleconference consultation on November 13, 2009 (74 FR 54562). In August 2010, EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA (75 FR 42085).

The first external review draft ISA for Ozone and Related Photochemical Oxidants will be discussed at a public meeting for review by CASAC, and public comments received will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How to Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0050 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0050. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: February 15, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–4372 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MN90; FRL–9272–2]

Notice of Issuance of Prevention of Significant Deterioration and Federal Operating Permits to Grand Casino Hinckley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that, on December 30, 2010, pursuant to title V of the Clean Air Act, EPA issued a title V Permit to Operate (title V permit) to the Mille Lacs Band Corporate Commission doing business as Grand Casino Hinckley. This permit authorizes Grand Casino Hinckley to operate three diesel-burning generator sets for peak load management and backup power at its facility in Hinckley, Minnesota. On December 30, 2010, pursuant to title I of the Clean Air Act, EPA also issued a modification of the facility's existing Prevention of Significant Deterioration (PSD) permit, also known as an Air Quality Construction Permit. The modification changes the permit's emissions testing frequency from every three years to every five years. The facility is located on the Mille Lacs Band of Ojibwe Indian Reservation.

DATES: During the public comment period for both permits, which ended April 5, 2010, EPA received comments on the draft title V permit, and revised the draft permit based on the comments. EPA mailed the final permit to the Mille Lacs Band Corporate Commission on January 4, 2011.

ADDRESSES: The final signed permits are available for public inspection online at *http://yosemite.epa.gov/r5/r5ard.nsf/Tribal+Permits!OpenView,* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kaushal Gupta, Environmental Engineer, EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–6803 or *gupta.kaushal@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What is the background information?
B. What is the purpose of this Notice?

A. What is the background information?

The three engines are Caterpillar Model 3516B turbocharged engines, each having 16 cylinders. Each engine operates at a rated speed of 1,800 revolutions per minute, produces shaft power of 2,593 brake horsepower, and drives a 1,825 kilowatt generator to produce electricity. When operating at capacity, each engine burns approximately 130.2 gallons per hour of diesel fuel with maximum sulfur content of 0.05%. The engines and facility are owned by Mille Lacs Band Corporate Commission doing business as Grand Casino Hinckley.

EPA received an application for a Federal title V Permit on December 8, 2005. On February 25, 2010, EPA made available for public comment a draft title V Permit (permit no. V–ML–2711500031–2010–01) and a draft modification of the PSD permit (permit no. PSD–ML–2711500031–2010–02). The title V permit incorporated all applicable air quality requirements for the engines, including the monitoring necessary to ensure compliance with these requirements. The draft modification of the PSD permit was issued because the facility, during the title V permit application process, requested a change to the PSD permit's emissions testing frequency from every three years to every five years. EPA provided the public with 30 days to comment on the draft permits. EPA received comments on the title V permit from the permit applicant requesting minor, clarifying revisions to the permit and requesting removal of the initial performance testing requirement in light of the more stringent testing required by the National Emissions Standards for Hazardous Air Pollutants, subpart ZZZZ. EPA made the minor, clarifying revisions and changed the initial performance testing requirement's deadline from "within 180 days of issuance of this permit" to "upon request of the EPA," which makes this term consistent with the PSD permit. EPA did not receive comments on the modification to the PSD permit. EPA finalized the permits and provided copies to the applicant pursuant to 40 CFR 71.11(i). The final permits and EPA's responses to public comments can be viewed online at *http://yosemite.epa.gov/r5/r5ard.nsf/Tribal+Permits!OpenView.*

B. What is the purpose of this Notice?

EPA is notifying the public of the issuance of the title V and PSD permits to Grand Casino Hinckley on December 30, 2010. The permits became effective on January 29, 2011.

Dated: February 14, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–4378 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9271–1]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee (CASAC); Ozone Review Panel for the Reconsideration of the 2008 National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel for the Reconsideration of the 2008 National Ambient Air Quality Standard (NAAQS) to continue the discussion of their advice regarding EPA's reconsideration of the 2008 Ozone NAAQS.

DATES: The CASAC teleconference will be held on March 23, 2011 from 9:30 a.m. to 1:30 p.m. (Eastern Time).

ADDRESSES: The teleconference will take place by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the teleconferences may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1300 Pennsylvania Avenue, NW., Washington, DC 20004; via telephone/voice mail (202) 564–2073; fax (202) 565–2098; or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC may be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the under the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including Ozone. As described in 75 FR 1381–1382, the CASAC Ozone Review Panel conducted scientific reviews of EPA's scientific assessments of the health and welfare effects of Ozone and other Photochemical Oxidants from 2005 through 2008. On September 16, 2009, EPA Administrator Lisa Jackson announced her decision to reconsider the March 12, 2008 primary and secondary Ozone NAAQS to ensure they are scientifically sound and protective of public health and the environment. EPA's Office of Air and Radiation requested the Ozone Review Panel that conducted the 2005–2008 review to provide comments on EPA's 2010 proposed Ozone standards.

This Panel (renamed "CASAC Ozone Review Panel for the Reconsideration of the 2008 NAAQS") held a public teleconference on January 25, 2010. A letter dated February 29, 2010 (EPA–CASAC 10–007), posted at *http://yosemite.epa.gov/sab/sabproduct.nsf/610BB57CFAC8A41C852576CF007076BD/$File/EPA-CASAC-10-007-unsigned.pdf,* was transmitted to

the EPA Administrator providing comment on the Administrator's proposed Ozone NAAQS.

As previously announced (76 FR 4661–4662), the CASAC Panel has been asked to discuss its responses to additional charge questions regarding the Ozone reconsideration at the teleconferences on February 18, 2011 and March 3, 2011. The purpose of the March 23, 2011 teleconference is for the Panel to continue its discussion of their advice on EPA's reconsideration of the 2008 Ozone NAAQS.

Technical Contacts: Any technical questions concerning EPA's charge questions may be directed to Susan Stone at *stone.susan@epa.gov* or (919) 541–1146.

Availability of Meeting Materials: The agenda, charge questions, public comments and any other meeting materials may be found posted at *http://www.epa.gov/casac* through the calendar link on the blue navigation bar.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. Written statements for the meeting should be received in the SAB Staff Office by March 14, 2011 so that the information may be made available to the Panel for its consideration prior to this meeting. Written statements should be supplied to the DFO via e-mail, preferably as an Adobe Acrobat PDF file.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 22, 2011.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–4377 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9270–9]

Science Advisory Board Staff Office; Request for Nominations; CASAC Mercury Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations of experts to serve on the Clean Air Scientific Advisory Committee (CASAC) panel to conduct an independent review of EPA's Mercury Technical Support Document.

DATES: Nominations should be submitted by March 21, 2011 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Angela Nugent, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2188; by fax at (202) 565–2098 or via e-mail at *nugent.angela@epa.gov.* General information concerning the EPA Clean Air Scientific Advisory Committee can be found at the EPA CASAC Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2.

EPA is considering regulating the emissions of hazardous air pollutants (HAPs) released from coal-burning electric generating units in the United States (U.S. EGUs) under Section 112(n)(1)(A) of the Clean Air Act (CAA). This regulation may potentially use a Maximally Achievable Control Device (MACT) approach to set a technology-based standard for reducing HAP emissions. EPA is developing a draft risk assessment for mercury, entitled *Technical Support Document: National-Scale Mercury Risk Assessment.* This draft assessment considers the nature and magnitude of the potential risk to public health posed by current U.S. EGU mercury emissions and the nature and magnitude of the potential risk posed by U.S. EGU mercury emissions in the future, once all anticipated CAA-related regulations potentially reducing mercury from U.S. EGUs are in place. EPA's Office of Air and Radiation has requested CASAC review of this draft document.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized experts with research experience and expertise in the following disciplines, particularly related to mercury: atmospheric fate, transport and modeling; aquatic fate, transport and modeling; bioaccumulation; human exposure; epidemiology; toxicology, including reproductive and neurotoxicology, biostatistics, and risk assessment.

EPA Contact for Background Information Pertaining to This Review: For questions concerning the development of EPA's mercury assessment, please contact Dr. Zachary Pekar at (919) 541–3704 or *pekar.zachary @epa.gov.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert *ad hoc* Panel. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the CASAC Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the CASAC Web site at *http://www.epa.gov/casac.* To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests: contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the CASAC Web site, should contact Dr. Angela Nugent, DFO, as indicated above

in this notice. Nominations should be submitted in time to arrive no later than March 21, 2011. 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.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the CASAC Web site at *http://www.epa.gov/casac.* Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In the CASAC Mercury Technical Support Document Review Panel, the SAB Staff Office will consider public comments on the List of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address at *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf.*

Dated: February 22, 2011.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2011–4374 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9271–7]

Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Maricopa County (Phoenix) PM–10 Nonattainment Area, Arizona Notice of Withdrawal of Adequacy of Motor Vehicle Emissions Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of adequacy; correction.

SUMMARY: This document corrects a notice published in the **Federal Register** on February 9, 2011 (76 FR 7204) announcing that EPA has withdrawn its May 30, 2008 adequacy finding of the 2010 particulate matter of ten microns or less (PM–10) motor vehicle emission budget (MVEB) for the Maricopa County (Phoenix) Nonattainment Area.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA Region 9, 415–947–4107, *nudd.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2011, EPA withdrew its May 30, 2008 adequacy finding of the 2010 particulate matter of ten microns or less (PM–10) motor vehicle emission budget (MVEB) for the Maricopa County (Phoenix) Nonattainment Area, and on February 9, 2011, EPA announced the withdrawal of the MVEB in the **Federal Register** at 76 FR–7204. EPA's February 9, 2011 notice contained a number of incorrect dates. EPA is making the corrections to the February 9, 2011 notice in today's document to avoid confusion regarding the date of the letters from EPA to the Arizona Department of Environmental Quality (ADEQ) and the Maricopa Association of Governments (MAG) withdrawing the adequacy finding and the effective date of the withdrawal of the adequacy finding, which is one and the same, January 31, 2011.

Today, EPA is making the following corrections to the February 9, 2011 notice:

1. The section **DATES** is corrected to read as follows: "EPA's withdrawal of the May 30, 2008 adequacy finding was made in letters dated January 31, 2011 from EPA Region 9 to ADEQ and MAG. This withdrawal of the May 30, 2008 adequacy finding was effective on January 31, 2011."

2. Under the section **SUPPLEMENTARY INFORMATION**, the final paragraph under subsection "I. Background" is corrected to read as follows: "EPA has withdrawn its May 30, 2008 adequacy finding without prior notice and comment because adequacy findings are not considered rulemakings subject to the procedural requirements of the Administrative Procedures Act. In addition, EPA does not believe notice through EPA's conformity Web site is necessary in advance because the withdrawn SIP is no longer pending before EPA for consideration. Consequently, further public comment would be unnecessary and not in the public interest. By sending the January 31, 2011 letters, EPA has also withdrawn all statements and comments previously made regarding its May 30, 2008 adequacy finding of the MVEBs budgets for transportation conformity purposes."

3. Under the section **SUPPLEMENTARY INFORMATION**, the paragraph under subsection "II. Notice of Withdrawal of MVEB Adequacy Determination" is corrected to read as follows: "This is an announcement of EPA's withdrawal of its May 30, 2008 adequacy finding. EPA withdrew this adequacy finding in letters dated January 31, 2011 from Deborah Jordan, Director, Air Division, EPA Region 9 to Eric C. Massey, Director, Air Quality Division, ADEQ and Dennis Smith, Executive Director, MAG. The effective date of this withdrawal is January 31, 2011 based on EPA's transportation conformity regulation at 40 CFR 93.118(f)(1)(vi). This announcement will also be made on EPA's Web site: *http://www.epa.gov/otaq/stateresources/transconf/index.htm* (once there, click on the 'Adequacy Review of SIP Submissions' button and proceed to the Region 9 page for SIP submissions that have already been found adequate or inadequate)."

Dated: February 15, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–4387 Filed 2–25–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, February 24, 2011 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2011.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3957.

Jonathan J. Cordone,

Senior Vice President and General Counsel.

[FR Doc. 2011–4120 Filed 2–25–11; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Emergency Response Interoperability Center Public Safety Advisory Committee Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document advises interested persons that the FCC Emergency Response Interoperability Center Public Safety Advisory Committee (PSAC) will hold its first meeting on March 15, 2011, at 10 a.m. in the Commission Meeting Room of the Federal Communications Commission.

DATES: March 15, 2011.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Designated Federal Official for PSAC at (202) 418–0492 (voice) or *genaro.fullano@fcc.gov* (e-mail); or Brian Hurley, Deputy Designated Federal Official for PSAC at (202) 418–2220 (voice) or *brian.hurley@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The PSAC is a Federal Advisory Committee that will provide recommendations to assist the Commission and the Emergency Response Interoperability Center (ERIC) in implementing the following policy objectives: (1) The adoption of technical and operational requirements and procedures to ensure a nationwide level of interoperability for the public safety broadband network; (2) the adoption and implementation of requirements and procedures to address operability, roaming, priority access, gateway functions and interfaces, the interconnectivity of public safety broadband networks, and other matters related to the functioning of the nationwide public safety broadband network; (3) the adoption of authentication and encryption requirements for common public safety broadband applications and network use; (4) the coordination of ERIC's policies with other entities, including other Federal agencies; and (5) such other policies for which ERIC may have responsibilities from time to time. On August 6, 2010, the FCC, pursuant to the Federal Advisory Committee Act, filed the charter for the PSAC for a period of two years through August 6, 2012.

Matters to be considered at this meeting include the duties set forth in the PSAC charter, the process for completing its tasks, and committee structure. Topics likely to be covered at this meeting include: the interoperability of 700 MHz public safety broadband networks with other public safety networks, including both narrowband networks and broadband networks; user applications; security and authentication features; and network evolution. A more detailed agenda will be released prior to the meeting.

Members of the general public may attend the meeting, and the FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The public may submit written comments before the meeting to Gene Fullano, the FCC's Designated Federal Official for the PSAC, by e-mail to *genaro.fullano@fcc.gov* or U.S. Postal Service Mail to Gene Fullano, Associate Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7–C738, Washington, DC 20554.

Federal Communications Commission.

Jennifer A. Manner,

Deputy Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2011–4398 Filed 2–25–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 3, 2011 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of February 17, 2011.

Audit Division Recommendation Memorandum on the Kansas Republican Party.

Audit Division Recommendation Memorandum on the Georgia Federal Elections Committee.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Commission Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–4549 Filed 2–24–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

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

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 15, 2011.

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

1. *Cara Mulder,* Prinsburg, Minnesota, to join a group acting in concert with Myron Mulder, Prinsburg, Minnesota; to acquire and retain control of PSB Financial Shares, Inc., and thereby indirectly acquire and retain control of Prinsbank, both in Prinsburg, Minnesota.

Board of Governors of the Federal Reserve System, February 23, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4356 Filed 2–25–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2011.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Citizens National Corporation*, Wisner, Nebraska; to acquire 100 percent of the voting shares of First National Bank of Friend, Friend, Nebraska.

Board of Governors of the Federal Reserve System, February 23, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4355 Filed 2–25–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the W.R. Grace and Company in Curtis, MD, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the W.R. Grace and Company in Curtis, Maryland, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: W.R. Grace and Company.

Location: Curtis, Maryland.

Job Titles and/or Job Duties: All Atomic Weapons Employer employees.

Period of Employment: Operational period from January 1, 1955 through December 31, 1958, and the residual radiation period from January 1, 1959 through October 31, 2009.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–4302 Filed 2–25–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Proposed HHS Recommendation for Fluoride Concentration in Drinking Water for Prevention of Dental Caries; Extension of Comment Period

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) is extending the comment period for a proposed recommendation that community water systems adjust the amount of fluoride in drinking water to 0.7 mg/L to provide the best of balance of protection from dental caries while limiting the risk of dental fluorosis. The proposed recommendation was published in the **Federal Register** on January 13, 2011, Volume 76, Number 9, page 2383.

DATES: The comment period on the proposed recommendations for fluoride concentration in drinking water for the prevention of dental caries has been extended to April 15, 2011. To receive consideration comments must be received no later than 11:59 p.m. EST on that date.

ADDRESSES: Comments are preferred electronically and may be addressed to

CWFcomments@cdc.gov. Written responses should be addressed to the Department of Health and Human Services, Centers for Disease Control and Prevention, CWF Comments, Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), 4770 Buford Highway, NE., MS F–10, Atlanta, GA 30341–3717.

FOR FURTHER INFORMATION CONTACT: Barbara F. Gooch, Associate Director for Science (Acting), 770–488–6054, *CWFcomments@cdc.gov*, Division of Oral Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention, 4770 Buford Highway, NE., MS F–10, Atlanta, GA 30341–3717.

SUPPLEMENTARY INFORMATION: The proposed recommendation was published in the **Federal Register** on January 13, 2011 (Volume 76, Number 9, page 2383) with a deadline for written comments of February 14, 2011. The proposed recommendation will update and replace the 1962 U.S. Public Health Service Drinking Water Standards related to recommendations for fluoride concentrations in drinking water. The U.S. Public Health Service recommendations for optimal fluoride concentrations were based on ambient air temperature of geographic areas and ranged from 0.7–1.2 mg/L.

HHS proposes to update and replace these recommendations because of new data that address changes in the prevalence of dental fluorosis, fluid intake among children, and the contribution of fluoride in drinking water to total fluoride exposure in the United States. As of December 31, 2008, the Centers for Disease Control and Prevention (CDC) estimated that 16,977 community water systems provided fluoridated water to 196 million people.

Since the proposed recommendation was published the Department has received a request to extend the comment period by an additional 60 days to allow sufficient time for a full review of the proposed action, including potential economic and health impacts. HHS is committed to affording the public a meaningful opportunity to comment on the proposed recommendation and supporting rationale and welcomes comments.

Dated: February 17, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–4343 Filed 2–25–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Comparative Effectiveness Research—Continuing Education." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 29, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Comparative Effectiveness Research—Continuing Education

Previous dissemination efforts in health care research and evidence through comparative effectiveness funded by the Federal Government have largely been focused in academic settings, rather than among physicians and clinicians in health care delivery settings. This project implements and evaluates methods that extend beyond the academic setting to engage the target audiences in the health care environment where decisions are typically made.

Most clinicians are required to complete continuing medical education (CME) accepted by accrediting organizations recognized by State medical boards. Over sixty boards require anywhere from 12 CME credits to 50 CME credits per year for a clinician to retain their State licensure. (State Medical Licensure Requirements and Statistics, 2010, *http://www.ama-assn.org/ama1/pub/upload/mm/40/table16.pdf.*) AHRQ currently provides CME credits on some of its comparative effectiveness research reviews; however, these CME credits are applicable to physicians only and AHRQ is not conducting any follow-up surveys with physicians on these CME activities to ascertain the impact on physician behavior. AHRQ is expanding its continuing education to include nurses, nurse practitioners, physician assistants, medical assistants, pharmacists, respiratory therapists, and other allied health professionals, as well as physicians. In addition, AHRQ wants to assess the impact continuing education has on clinician behavior, its perceived value, and whether or not education on comparative effectiveness research made a difference in a clinician's confidence in applying comparative effectiveness research in practice, understanding the application of such research, and improved ability to counsel patients on treatment and management alternatives.

Dissemination of clinical and research findings to clinicians varies in approach, methods and by target audience. Highly technical and scientific publications are peer reviewed and serve to validate the methods, calculations, analysis and conclusions of studies and research. Typically, scientific journals have a narrowly defined readership and information regarding clinical application of findings is not part of the criteria for manuscript acceptance and publication. AHRQ complies with the journal guidelines when submitting manuscripts regarding comparative effectiveness research (CER) information for publication in the Annals of Internal Medicine. However, it is nearly impossible to discern whether the manuscript was read, its effect on the reader, and the likelihood that the reader will utilize the information.

Accredited education is widely accepted as a method for dissemination of research findings and is provided in various ways, including online, on site, and through audio and video presentations. To earn credit for participation, clinicians must provide contact information, allowing the possibility of follow-up data collections regarding behaviors, attitudes and performance information about the participant. AHRQ has also provided accredited education as a method to disseminate CER findings, and with this project, has reaffirmed the value of CME in dissemination of CER findings and expanded the commitment to provide

accredited education for multiple health care disciplines.

The goal of this project is to enhance awareness of comparative effectiveness research among clinicians and measure the value and impact of these efforts.

This study is being conducted by AHRQ through its contractor, PRIME Education, Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to: the quality, effectiveness, efficiency, appropriateness and value of healthcare services; quality measurement and improvement; and clinical practice. 42 U.S.C. 299a(a)(1), (2) and (4).

Method of Collection

To achieve this project's goal, the following activities and data collections will be implemented:

1. Provide continuing medical education (CME) or continuing education units (CE/CEU) through the appropriate accrediting organizations by providing 15 multimedia online continuing education modules per year for 3 years, on specific comparative effectiveness research reports and provide quantitative and qualitative metrics about usage of these programs by physicians, pharmacists, nurses, nurse practitioners, physician assistants, medical assistants, allied health professionals, and other clinicians. This activity is designed to raise awareness of and utility of comparative effectiveness research by providing free and easy access to clinician guides and consumer guides for clinicians and their patients/families to assist in making informed decisions about heath care.

The following monthly utilization rates for the online CME/CE/CEU activities will be collected: the number of CME/CE/CEU certificates issued, monthly participation statistics, and the number of clinician and consumer guides ordered. Because all of the CME/CE/CEU activities are online, the utilization rates are automatically collected by the contractor's computer when the health care professional registers for the activity, participates in the online education, requests continuing education credit for the activity, and orders clinician and consumer guides. Therefore, this activity does not require OMB clearance.

2. CME/CE/CEU registration data is provided by the health care professional when he or she logs on and registers for a course. The health care professional would key in their name, e-mail address, address (selecting either their home or business address), telephone number, type of discipline, and their practice setting. This data is collected to ensure that the health care professional receives CME/CE/CEU credit for the courses that he or she takes and will be used to implement the AI–IRQ Online Continuing Education Participant Evaluation described below.

3. AHRQ Online Continuing Education Participant Evaluation to evaluate the effectiveness and impact of the CME/CE/CEU modules at 60 days, 6 months and 1 year after completion of the module (see Attachment B). The purpose of this evaluation is to assess the clinicians' confidence level in applying comparative effectiveness research, their understanding of the research, how valuable the research is to the clinician and their intent to change their practice based on this research. Evaluation questions have been developed based upon established conceptual frameworks and principles of adult learning.

Data collected will be used to assess the utility and effectiveness of the educational module in increasing awareness and utility of information provided in comparative effectiveness research. Data will provide useful quantitative arid qualitative metrics which AHRQ can use to measure the outcomes of the project. Moreover, these metrics will enable AHRQ to identify new potential barriers that may thwart the outcome—lending important information regarding future educational needs.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. The AHRQ Online Continuing Education Participant Evaluation will be completed at 3 different points in time after completion of the CME/CE/CEU education module. The CME/CE/CEU registration data is collected for an estimated 1,500 health care professionals and takes approximately 5 minutes. The same estimated 1,500 health care professionals will complete the evaluation 3 times each year, which takes about 3 minutes to complete. The total annual burden is estimated to be 350 hours.

Exhibit 2 shows the estimated annual cost burden to respondents, based on their time to participate in surveys for each CME/CE/CEU module. The annual cost burden is estimated to be $16,290.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS PER MODULE

Form name	Number of respondents	Number of responses per respondent	Hours per response survey	Total burden hours
AHRQ Online Continuing Education CME/CE/CEU Registration Data	1,500	1	5/60	125
AHRQ Online Continuing Education Participant Evaluation	1,500	3	3/60	225
Total	3,000	na	na	350

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN PER MODULE

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
AHRQ Online Continuing Education CME/CE/CEU Registration Data	1,500	125	$46.54	$5,818
AHRQ Online Continuing Education Participant Evaluation	1,500	225	46.54	10,472
Total	3,000	350	na	$16,290

*Based upon the mean of the average hourly wages for Physicians (29–1069; $83.59), Pharmacists (291051; $51.27), Physician Assistants and Nurse Practitioners (29–1071; $40.78), Registered Nurses (291111; $31.99) and Healthcare Practitioners (29–9099; $25.05), National Compensation Survey: Occupational wages in the United States May 2009, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for the 45 CME/CE/CEU modules (15 per year for 3 years). The total cost is estimated to be $3,963,150.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Development of CME/CE/CEU Module	$2,256,300	$752,100
Module Accreditation	900,000	300,000
Module Dissemination	450,000	150,000
Evaluation instrument development and dissemination, data collection, processing and analysis	356,850	118,950
Total	$3,963,150	$1,321,050

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–4130 Filed 2–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Improving Patient Safety System Implementation for Patients with Limited English Proficiency." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 2010 and allowed 60 days for public comment. One comment was received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 30, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Improving Patient Safety System Implementation for Patients With Limited English Proficiency

According to the 2009 American Community Survey (U.S. Census Bureau), approximately 57 million people—20% of the U.S. population—speak a language other than English at home. Of that number, approximately 24 million (8.6% of the U.S. population) are defined as having Limited English Proficiency (LEP), meaning that they report speaking English less than "very well." Recent research suggests that adverse events affect LEP patients more severely than they affect English-speaking patients. In addition to linguistic barriers, LEP patients often face cultural barriers to care and low health literacy as well.

AHRQ proposes to develop a new training program to improve patient safety system implementation for patients with limited English proficiency. The new training program is designed as a continuing education module within the TeamSTEPPS system. TeamSTEPPS is an evidence-based framework to optimize team performance across the healthcare delivery system with the goal of improving patient safety. This system has been successfully implemented in numerous hospitals across the United States. The TeamSTEPPS curriculum is an easy-to-use comprehensive multimedia kit that includes modules in text and presentation format, video vignettes to illustrate key concepts, and workshop materials, including a supporting CD and DVD, on change management, coaching, and implementation. Portions of the training module may also be useful for hospitals that have not implemented TeamSTEPPS. The new training module will show how TeamSTEPPS principles can be better implemented to improve the safety of patients with LEP.

AHRQ proposes to field-test this module by conducting case studies of its implementation in three hospitals. The primary goals of this field test are to identify needed changes in the training module content or format to increase the feasibility of implementation and improve module outcomes including audience response, learning, adoption of recommended team behaviors, and improved outcomes for LEP patients. Patient outcome measures for this project include the patient's access to an interpreter and how well they

understood instructions from the hospital staff.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following activities will be implemented:

(1) Readiness Assessment Survey of whether a hospital has the right policies in place to implement the training module. The readiness assessment will be completed by the key contact person (hospital champion) at each site. The assessment may be completed in consultation with other members of a "change team" that the hospital champion may form to support the initiative.

(2) Pre-work for Master-Training, including a survey, process map exercise, and a request to locate the hospital's or organization's policy on accessing language services. The pre-work will be completed by one of the hospital staff persons selected to be a Master-Trainer at each site.

(3) Master Training session in which two staff members from each of three participating hospitals will learn how to teach the training module. The TeamSTEPPS system requires at least two trainers for each hospital because its implementation is a team endeavor. Trainers will be selected either by the hospital champion, or by the "change team" formed by the hospital champion to support the intervention. Trainers will be selected from among natural leaders working within the hospital unit where the training will take place. Ideally the team will include a provider (*e.g.*, doctor, nurse) and an interpreter. Hospital staff selected to attend the training will be required to travel to Boston for the training session.

(4) Staff Training session using the training module developed for this project. Training participants will be drawn from the interprofessional care team in one or more hospital units (*e.g.,* ob/gyn, surgery, *etc.*). This team may include nurses, physicians, technicians, front desk staff, and interpreters. Since the training teaches team behaviors, the entire interprofessional care team in a given hospital unit will be asked to attend the training session together. The training will be conducted onsite by the hospital staff members who attended the Master Training.

(5) Training Participant Satisfaction Survey to assess trainee satisfaction with, and perceived adequacy of, the training module. This questionnaire will be administered at the end of the training module.

(6) Learning Outcomes Survey to assess staff knowledge about the best way to handle situations with LEP patients. To measure the change in staff knowledge resulting from the training module this questionnaire will be administered both before and after the training.

(7) Pre-training Behavior Survey to assess trainee behavior change resulting from the training. The behavior measured by this survey is the hospital staffs' use of interpreters when interacting with LEP patients. To measure the change in staff behavior resulting from the training module, questions from this survey are repeated in the post-training behavior survey. Interpreters are exempt from this questionnaire because the questions relate to interpreter use.

(8) Post-Training Behavior Survey to assess trainee use of interpreters when interacting with LEP patients (repeated from the Pre-Training Behavior Survey) and questions to assess the use of team communication tools demonstrated during the training.

(9) Patient Outcome Survey to measure change in patient communication and safety outcomes resulting from the training. This survey's target audience is all patients identified as LEP. The purpose of this survey is to measure intermediate outcomes related to LEP patients' access to language services, comprehension, and satisfaction with services.

(10) Semi-Structured Follow-Up Interview to assess hospitals' experiences implementing the training module. This semi-structured interview's target audience consists of up to two master-trainers or change team members in each hospital where the training module is implemented. These interviews will be conducted 3 times at the 2-week, 6-week and 10-week mark after the training.

(11) Semi-Structured Site Visit Interview to assess the hospitals' experiences implementing the training module. This semi-structured interview's target audience consists of up to 6 persons who may include master-trainers, change team members, frontline staff members, or other persons designated by the "hospital champion" as persons who might provide insight into module implementation and outcomes. These interviews will be conducted 3 months after the training.

Estimated Annual Respondent Burden

Exhibit 1 presents estimates of the reporting burden hours for this one-year data collection process. Time estimates are based on experience with similar instruments used with comparable respondents. The Readiness Assessment Survey will be completed by the key contact/project champion at each of the 3 participating hospitals and will take about 5 minutes. The pre-work for the Master-Training will be completed by the two trainers selected for each site and will take about 30 minutes. The Master-Training will be conducted with 2 staff members from each hospital and will last 4.5 hours; the burden estimate of 12.5 hours includes 8 hours of travel time to and from the training site. Staff Training will include up to 30 staff members at each hospital (plus the 2 trainers who are staff members) and will last 1 hour. The Training Participant Satisfaction Survey will be completed by Staff Training participants at the end of the training and takes 5 minutes to complete. The Learning Outcomes Survey will be administered twice, before and after the training, and will require 10 minutes. The Pre-Training Behavior Survey will be administered to all staff invited to the training except for interpreters. It will require approximately 5 minutes. Interpreters do not complete this questionnaire because the questions relate to interpreter use. The Post-training Behavior survey will be administered two or more weeks after the training to all staff who were invited to the training, and will take approximately 7.5 minutes to complete. The Patient Outcome Survey will be administered twice, before and after the intervention, to a sample of approximately 90 patients (30 from each of the 3 participating hospitals) and requires about 10 minutes to complete. Semi-Structured Follow-up interviews will be conducted three times over a 12-week period with two master trainers or change team members from each hospital. Each semi-structured follow-up interview will last for about an hour. Semi-Structured Site visit interviews will be conducted with 6 staff members from each hospital and will take an hour to complete. The total annualized burden hours are estimated to be 295 hours.

Exhibit 2 presents the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be about $6,980.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data collection method	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Readiness Assessment Survey	3	1	5/60	0.25
Pre-Work for Master-Training	3	2	30/60	3
Train the Trainer Training	3	2	12.5	75
Staff Training	3	32	1	96
Training Participant Satisfaction Survey	3	30	5/60	8
Learning Outcomes Survey	3	60	10/60	30
Pre-Training Behavior Survey	3	25	5/60	6
Post-Training Behavior Survey	3	30	7.5/60	11
Patient Outcome Survey	90	2	10/60	30
Semi-Structured Follow-up interview	3	6	1	18
Semi-Structured Site visit interview	3	6	1	18
Totals	117	na	na	295

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Data collection method	Number of respondents	Total burden hours	Average hourly wage rate *	Totals cost burden
Readiness Assessment Survey	3	0.25	$26.50	$7
Pre-Work for Master-Training	3	3	26.50	80
Train the Trainer Training	3	75	26.50	1,988
Staff Training	3	96	22.02	2,114
Training Participant Satisfaction Survey	3	8	22.02	176
Learning Outcomes Survey	3	30	22.02	661
Pre-Training Behavior Survey	3	6	22.04	132
Post-Training Behavior Survey	3	11	$22.02	$242
Patient Outcome Survey	90	30	20.90	627
Semi-Structured Follow-up interview	3	18	26.50	477
Semi-Structured Site visit interview	3	18	26.50	477
Totals	117	295	na	6,980

* The average hourly wage rate for readiness assessments, train-the-trainer trainings, semi-structured site visit interviews, and semi-structured follow-up interviews was calculated based on the average of the mean hourly wage rate for healthcare practitioners and medical occupations (all professions), $31.02 and the average hourly wage rate for interpreters and translators, $21.97. The average hourly rate for staff receiving training was calculated based on the average of the mean hourly wage rate for healthcare practitioners and medical occupations (all professions), $31.02, mean hourly wage rate for interpreters and translators, $21.97, and mean hourly wage rate for healthcare support occupations, $13.06. The average hourly wage rate for respondents to the pre-training behavior survey was calculated based on the average of the mean hourly wage rate for healthcare practitioners and medical occupations (all professions), $31.02, and mean hourly wage rate for healthcare support occupations, $13.06. The average hourly wage rate for patients was calculated on the mean hourly wage rate for all occupations. Average hourly rate for unit staff, non-interpreter was calculated based on the average of the mean hourly rate for healthcare practitioners and medical occupations (all professions), $31.02, and occupations (all professions), $31.02, mean hourly wage rate for interpreters and translators, $21.97, and mean hourly wage rate for healthcare support occupations, $13.06. Mean hourly wage rates for these groups of occupations were obtained from the Bureau of Labor & Statistics on "Occupational Employment and Wages, May 2009" found at the following urls: *http://www.hls.gov/oes/current/naics4_622100.htm, http://www.hls.gov/ocs/current/ocs273091.htm, http://www.hls.gov/oes/current/oes_nat.htm.*

Estimated Annual Costs to the Federal Government

The total cost of this contract to the government is $499,978. The project extends over 4 fiscal years, although data collection will take place over the course of a single year. Exhibit 3 shows a breakdown of the total cost as well as the annualized cost for the data collection, processing and analysis activity.

EXHIBIT 3—ESTIMATED COST

Cost component	Total cost	Annual cost
Project Development	$301,664	$75,416
Data Collection Activities	52,629	13,157
Data Processing and Analysis	52,629	13,157
Publication of Results	51,658	12,915
Project Management	41,399	10,350
Total	499,978	124,995

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 15, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–4135 Filed 2–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b-21 to b-26, (Patient Safety Act), and its implementing regulation at 42 CFR part 3, provides for the formation of Patient Safety Organizations (PSO5), which collect, aggregate, and analyze confidential information regarding the quality and safety of healthcare delivery. On December 30, 2010, HHS issued "Guidance Regarding Patient Safety Organizations' Reporting Obligations and the Patient Safety and Quality Improvement Act of 2005" (Guidance) which can be accessed electronically at: *http://www.PSO.AHRQ.gov/regulations/guidance.pdf*.

This notice announces the intention of AHRQ to request that the Office of Management and Budget (OMB) amend the approved clearance, OMB No. 0935–0143, that allows information collection related to implementation of the Patient Safety Act. This amendment includes a new attestation form related to the Guidance. In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection. The purpose of this notice is to allow 30 days for public comment on the new attestation form related to the Guidance.

DATES: Comments on this notice must be received by March 30, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, AHRQ, Reports Clearance Officer, by fax at (301) 427–1000 (attention: AHRQ Reports Clearance Officer) or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov*. Copies of this proposed form and specific details on the estimated burden can be obtained from AHRQs Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION:

Proposed Form

This notice proposes the addition of a new attestation form, "Supplemental Attestations Regarding FDA Reporting Obligations Of PSOs," to the existing approved clearance, "Patient Safety Organization Certification for Initial Listing and Related Forms and a Patient Safety Confidentiality Complaint Form" (OMB No. 0935–0143).

In order to implement the Patient Safety Act, HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), published in the **Federal Register** on November 21, 2008: 73 FR 70731–70814. Pursuant to the Patient Safety Rule, entities seeking to become and remain listed by the Secretary as PSOs submit certifications to the Secretary. These entities must certify that they meet or will meet specified statutory criteria and requirements for PSOs, as further explained in the Patient Safety Rule.

On December 30, 2010, HHS issued Guidance to address questions that have arisen regarding the obligations of PSOs where they or the organization of which they are a part are legally obligated under the Federal Food, Drug, and Cosmetic Act and its implementing regulations to report certain information to the FDA and to provide FDA with access to its records, including access during an inspection of its facilities. This proposed form will collect information from PSOs as described in the Guidance.

Methods of Collection

Existing PSOs will be required to complete this proposed form immediately; an entity seeking listing as a PSO will be required to complete this proposed form at the time it submits its certifications for initial listing. Every entity completing this proposed form will be required to attest whether it is subject to the Guidance. Entities that are subject to the Guidance will be required to make one to three additional attestations. To complete this form, a respondent will need to review each attestation, check the appropriate "yes' or "no" box that follows each applicable attestation, and complete and sign the form.

The burden estimate for completing this form is 15 minutes per respondent; fewer than 100 entities are expected to submit responses.

Estimated Annual Costs to the Federal Government

Under the Patient Safety Act and Patient Safety Rule, AHRQ collects and reviews certifications from entities that seek listing or continued listing as PSOs. Entities applying to be PSOs and existing PSOs may also be required to provide additional information to AHRQ. The cost to AHRQ of processing the information collected with the above-described form is minimal: An estimated equivalent of approximately 0.01 FTE or $1,500 and no new overhead costs.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on the above described attestation form are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and

included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 15, 2011.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2011–4133 Filed 2–25–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–269]

Proposed Substances To Be Evaluated for Set 25 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Request for comments on the proposed substances to be evaluated for Set 25 toxicological profiles.

SUMMARY: ATSDR is initiating the development of its 25th set of toxicological profiles (CERCLA Set 25). This notice announces the list of proposed substances that will be evaluated for CERCLA Set 25 toxicological profile development. ATSDR's Division of Toxicology and Environmental Medicine is soliciting public nominations from the list of proposed substances to be evaluated for toxicological profile development. ATSDR also will consider the nomination of any additional, non-CERCLA substances that may have public health implications, on the basis of ATSDR's authority to prepare toxicological profiles for substances not found at sites on the National Priorities List. The agency will do so in order to "* * * establish and maintain inventory of literature, research, and studies on the health effects of toxic substances" under CERCLA Section 104(i)(1)(B), to respond to requests for consultation under section 104(i)(4), and to support the site-specific response actions conducted by ATSDR, as otherwise necessary.

DATES: Nominations must be submitted within 30 days of the publication of this notice.

ADDRESSES: Nominations may be submitted electronically. Refer to the section *Submission of Nominations* (below) for the specific address.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9601 *et seq.*] amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) [42 U.S.C. 9601 *et seq.*] by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances. This list identifies 275 hazardous substances that ATSDR and EPA have determined pose the most significant current potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); and November 29, 2005 (70 FR 71506).

Proposed Substances To Be Evaluated for Set 25 Toxicological Profiles

Each year, ATSDR develops a list of substances to be considered for toxicological profile development; this list is compiled from ATSDR's Priority List of Hazardous Substances and from previously nominated substances of public health concern. The following 74 proposed substances will be considered for Set 25 Toxicological Profile development:

Candidate Substances for Profile Development

1. s,s,s-Tributyl phosphorotrithioate (CAS No. 000078–48–8).
2. 2,4-Dimethylphenol (CAS No. 000105–67–9).
3. Bromine (CAS No. 007726–95–6).
4. Bromodichloroethane (CAS No. 0000683–53–4).
5. Butyl benzyl phthalate (CAS No. 000085–68–7).
6. Dibenzofuran (CAS No. 000132–64–9).
7. Dicofol (CAS No. 000115–32–2).
8. Methane (CAS No. 74–82–8).
9. Neptunium-237 (CAS No. 013994–20–2).
10. Palladium (CAS No. 007440–05–3).
11. Parathion (CAS No. 000056–38–2).
12. Pentachlorobenzene (CAS No. 000608–93–5).
13. Polonium-210 (CAS No. 013981–52–7).
14. Treflan (Trifluralin) (CAS No. 001582–09–8).
15. Trichlorofluoroethane (CAS No. 027154–33–2).
16. Fluorides (CAS Nos. 007782–41–4, 007664–39–3, 016984–48–8).
17. Selenium (CAS No. 007782–49–2).
18. Aldrin/Dieldrin (CAS Nos. 000309–00–2, 000060–57–1).
19. Beryllium (CAS No. 007440–41–7).
20. Creosote/Coal Tar (CAS Nos. 008021–39–4, 008007–45–2, 008001–58–9, 065996–93–2).
21. DDT, DDE, DDD (CAS Nos. 000050–29–3, 000072–55–9, 000072–54–8, 000789–02–6, 000053–19, 003424–82–6).
22. Di(2-ethylhexyl)phthalate (CAS No. 000117–81–7).
23. Hexachlorobenzene (CAS No. 000118–74–1).
24. Methoxychlor (CAS No. 000072–43–5).
25. 1,2–Dichloroethane (CAS No. 000107–06–2).
26. Asbestos (CAS Nos. 001332–21–4, 012001–29–5, 012172–73–5).
27. Benzidine (CAS No. 000092–87–5).
28. Di-n-butyl phthalate (CAS No. 000084–74–2).
29. Pentachlorophenol (CAS No. 000087–86–5).
30. Endosulfan (CAS Nos. 000115–29–7, 001031–07–8, 000959–98–8, 033213–65–9).
31. Ethion (CAS No. 000563–12–2).
32. Methylene chloride (CAS No. 000075–09–2).
33. Polychlorinated biphenyls (CAS Nos. 001336–36–3, 011097–69–1, 011096–82–5, 012672–29–6, 053469–21–9, 012767–79–2, 011104–28–2, 012674–11–2, 011141–16–5, 071328–89–7, 026914–33–0).
34. Toluene (CAS No. 000108–88–3).
35. Chlorophenols (CAS Nos. 000088–06–2, 025167–83–3, 000120–83–2, 000095–95–4, 000095–57–8, 004901–51–3, 000935–95–5, 000058–90–2, 000106–48–9, 025167–80–0).
36. Hexachlorocyclopentadiene (CAS No. 000077–47–4).
37. Mercury (CAS Nos. 007439–97–6, 022967–92–6, 007487–94–7).
38. 3,3′-Dichlorobenzidine (CAS No. 000091–94–1).
39. Chlorinated Dibenzodioxin (CDDs) (CAS Nos. 001746–01–6, 034465–46–8, 037871–00–4, 041903–57–5, 036088–22–9, 035822–46–9, 003268–87–9,

057653–85–7, 039227–28–6, 019408–74–3, 040321–76–4).

40. Chloroethane (CAS No. 000075–00–3).

41. Chloromethane (CAS No. 000074–87–3).

42. Dinitrotoluene (CAS Nos. 025321–14–6, 000121–14–2, 000606–20–2).

43. Chloroform (CAS No. 000067–66–3).

44. Chlorpyrifos (CAS No. 002921–88–2).

45. Endrin (CAS Nos. 000072–20–8, 053494–70–5, 007421–93–4).

46. Tetrachloroethylene (CAS No. 000127–18–4).

47. Trichloroethylene (CAS No. 000079–01–6).

48. 1,2–Dichloroethene (CAS Nos. 000540–59–0, 000156–60–5, 000156–59–2).

49. Carbon disulfide (CAS No. 000075–15–0).

50. 1,1–Dichloroethene (CAS No. 000075–35–4).

51. 2,4–Dinitrophenol (CAS No. 000051–28–5).

52. 4,6-Dinitro-o-cresol (CAS No. 000534–52–1).

53. Disulfoton (CAS No. 000298–04–4).

54. Hexachlorobutadiene (CAS No. 000087–68–3).

55. Polycyclic aromatic hydrocarbons (CAS No. 130498–29–2).

56. Acetone (CAS No. 000067–64–1).

57. Chlordane (CAS Nos. 000057–74–9, 005103–71–9, 005103–74–2, 027304–13–8, 056641–38–4, 12789–03–6, 056534–02–2, 039765–80–5, 005103–73–1, 003734–48–3).

58. Chlordecone/Mirex (CAS Nos. 000143–50–0, 002385–85–5).

59. Chlorinated Dibenzofurans (CDFs) (CAS Nos. 042934–53–2, 039001–02–0, 038998–75–3, 057117–31–4, 055684–94–1, 030402–15–4, 051207–31–9, 067562–39–4, 072918–21–9, 030402–14–3, 057117–44–9, 070648–26–9, 060851–34–5, 057117–41–6, 055673–89–7).

60. 1,2-Dibromo-3-chloropropane (CAS Nos. 000096–12–8, 067708–83–2).

61. 1,2-Dibromoethane (CAS No. 000106–93–4).

62. 2-Hexanone (CAS No. 000591–78–6).

63. 4,4′-Methylene bis(2-chloroaniline) (CAS No. 000101–14–4).

64. N-Nitrosodiphenylamine (CAS No. 000086–30–6).

65. 2-Butanone (CAS No. 000078–93–3).

66. 1,1-Dichloroethane (CAS No. 000075–34–3).

67. 1,2-Diphenylhydrazine (CAS No. 000122–66–7).

68. Bis(2-chloroethyl) ether (CAS No. 000111–44–4).

69. Chlorobenzene (CAS No. 000108–90–7).

70. Radium (CAS Nos. 007440–14–4, 013982–63–3, 015262–20–1, 013233–32–4).

71. Thorium (CAS Nos. 007440–29–1, 014269–63–7, 014274–82–9).

72. 1,1,2-Trichloroethane (CAS No. 000079–00–5).

73. N-Nitrosodimethylamine (CAS No. 000062–75–9).

74. N-Nitrosodi-n-propylamine (CAS No. 000621–64–7).

Submission of Nominations for the Evaluation Set 25 Proposed Substances: Today's notice invites voluntary public nominations for substances not listed in this notice. Nominations are most useful if they include the full name of the nominator, title, affiliation, e-mail address, and telephone number.

ATSDR will evaluate all data and information associated with nominated substances and will determine the final list of substances to be chosen for toxicological profile development. Substances will be chosen according to ATSDR's specific guidelines for selection. These guidelines can be found in the *Selection Criteria* announced in the **Federal Register** on May 7, 1993 (85FR27286). Please submit nominations by any of the following methods:

E-mail: tpcandidatecomments@cdc.gov.

Fax: 770.488.4178.

Mail: CDR Jessilynn Taylor, 1600 Clifton Rd., NE., MS F–62, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Commander Jessilynn B. Taylor by e-mail at *jxt1@cdc.gov* or by phone at 770–488–3313.

Please ensure that your comments are submitted within the specified nomination period. Nominations received after the closing date will be marked as late and may be considered only if time and resources permit.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 2011–4327 Filed 2–25–11; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0679]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Division of Heart Disease and Stroke Prevention Management Information System—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Division of Heart Disease and Stroke Prevention (DHDSP) is currently approved to collect progress and activity information from awardees funded through two programs: The National Heart Disease and Stroke Prevention Program (NHDSPP), and the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program. Information is collected semi-annually through an electronic Management Information System (MIS). The current approval is scheduled to expire 5/31/2011 (OMB No. 0920–0679).

CDC requests OMB approval to continue information collection, with changes, for three years. A net reduction in the number of respondents will result in a net reduction in burden hours. Although there will be an increase in the number of awardees funded for State-based heart disease and stroke prevention (HDSP) programs, reporting requirements involving the MIS will be discontinued for awardees funded through the WISEWOMAN program. No changes are proposed to the information collection instrument, the burden per response, or the frequency of information collection.

CDC currently supports population-based heart disease and stroke prevention efforts in selected States and

the District of Columbia. As funding allows, CDC's strategic plan calls for expanding the program to health departments in all U.S. States and territories. CDC works with HDSP program awardees to implement and evaluate evidence-based public health prevention and control strategies that address risk factors and reduce disparities, disease, disability, and death from heart disease and stroke.

The DHDSP MIS provides a standardized, electronic interface for the collection of progress and activity information from HDSP awardees. The information collection includes work plans, objectives, partners, data sources, and policy and environmental assessments. The MIS produces both State-specific and aggregate reports that are used for performance monitoring, program evaluation, and technical assistance. The monitoring and evaluation plan for HDSP awardees is part of an overall initiative within CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to promote more efficient ways of using resources and achieving greater health impact.

CDC will continue to use the information collected through the DHDSP MIS to identify State-specific heart disease and stroke prevention priorities and objectives, and to describe the impact and reach of program interventions. Respondents will be 42 health departments in 41 States and the District of Columbia (DC). Respondents will continue to submit their progress and activity information to CDC semi-annually. There are no costs to respondents other than their time. The total estimated annualized burden hours are 504.

Estimated annualized burden hours

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State-Based Heart Disease and Stroke Prevention Programs	42	2	6

Dated: February 22, 2011.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4330 Filed 2–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Maternal Vitamin D Status and Preterm Birth, DP11–002, Initial Review

Correction: The notice was published in the **Federal Register** on December 17, 2010, Volume 75, Number 242, Page 78999. The time and date should read as follows:

Time and Date: 11 a.m.–5 p.m., April 12, 2011 (Closed).

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, Georgia 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 17, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–4305 Filed 2–25–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0074]

Draft Guidance for Industry on Medication Guides—Distribution Requirements and Inclusion of Medication Guides in Risk Evaluation and Mitigation Strategies; 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 "Medication Guides—Distribution Requirements and Inclusion in Risk Evaluation and Mitigation Strategies (REMS)." This draft guidance addresses two topics pertaining to Medication Guides for drug and biological products. First, the draft guidance addresses when FDA intends to exercise enforcement discretion regarding dispensing requirements for Medication Guides that must be distributed with a drug or biological product dispensed to a healthcare professional for administration to a patient instead of being dispensed directly to the patient for self-administration or to the patient's caregiver for administration to the patient. Second, the draft guidance addresses when a Medication Guide will be required as part of a REMS. The draft guidance is intended to answer questions that have arisen concerning these topics.

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 May 31, 2011.

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, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. 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: Kristen E. Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6226, Silver Spring, MD 20993–0002, 301–796–5400; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Medication Guides—Distribution Requirements and Inclusion of Medication Guides in Risk Evaluation and Mitigation Strategies (REMS)." This draft guidance is intended to address two topics pertaining to Medication Guides for drug and biological products.

Medication Guides are primarily for prescription drug and biological products used on an outpatient basis without direct supervision by a healthcare professional. Questions have arisen concerning when a Medication Guide must be distributed with a drug or biological product dispensed to a healthcare professional for administration to a patient in certain situations, for example, in an inpatient setting or an outpatient setting such as a clinic or infusion center. This draft guidance is intended to articulate the circumstances under which FDA intends to exercise enforcement discretion regarding Medication Guide distribution.

The second topic addressed by the draft guidance is when a Medication Guide will be required as part of a REMS. Under section 505–1(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355–1(e)), FDA may require that a REMS for a drug include one or more of the elements described in section 505–1(e), including (when the criteria in part 208 (21 CFR part 208) are met), the requirement for an applicant to develop a Medication Guide for distribution to each patient when the drug is dispensed. Since the enactment of the Food and Drug Administration Amendments Act of 2007, FDA has, as a matter of policy, considered any new Medication Guide (or safety-related changes to an existing Medication Guide) to be part of a REMS. However, the Agency has the authority to determine, based on the risks of a drug and public health concern, how a Medication Guide should be required when the standard in part 208 is met. Based on the risks and public health concern, the Agency may require:

(1) A Medication Guide in accordance with part 208 that is not a part of a REMS or

(2) A Medication Guide in accordance with part 208 and section 505–1 of the FD&C Act that is part of a REMS, which will include other parts of a REMS (such as the timetable for submission of assessments) and possibly other REMS elements (including elements to assure safe use).

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 when FDA intends to exercise enforcement discretion regarding Medication Guide distribution and inclusion of Medication Guides in REMS. 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. It is no longer necessary to send two copies of mailed 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. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 314.70 and 600.12 have been approved under OMB control numbers 0910–0001 and 0910–0338; the collections of information in part 208 have been approved under OMB control number 0910–0393.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: February 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4341 Filed 2–25–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: March 15, 2011.

Time: 11 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Ken D. Nakamura, PhD, Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852. 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4304 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: March 30, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: John K. Hayes, PhD, Scientific Review Officer, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892. 301–451–3398. *hayesj@mail.nih.gov.*

Dated: February 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4363 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 18, 2011, 8 a.m. to March 18, 2011, 6 p.m., The River Inn, 924 25th Street, NW., Washington, DC 20037 which was published in the **Federal Register** on February 8, 2011, 76 FR 6803–6805.

The meeting will be held April 11, 2011, 8:30 a.m. to 6 p.m. at the Melrose Hotel, 2430 Pennsylvania Avenue, NW. Washington DC 20037. The meeting title has been changed to "ES10–002: Epigenetics and Human Disease II." The meeting is closed to the public.

Dated: February 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4362 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–10–181: CounterAct U 54.

Date: March 17–18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD 21202.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892. (301) 594–1245. *ivinsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–HD–11–101: Sleep and Social Environment: Basic Biopsychosocial Processes (R01).

Date: March 22, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–HD–11–102: Sleep and Social Environment: Basic Biopsychosocial Processes (R21).

Date: March 22, 2011.

Time: 1 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892. (301) 435–4445. *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mechanisms of Neurodegeneration.

Date: March 24, 2011.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892. (301) 435–4433. *behart@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4361 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

Date: April 27, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892. 301–451–3397. *sukharem@mail.nih.gov.*

Dated: February 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4360 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 24, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: The theme of the Office of AIDS Research Advisory Council (OARAC) meeting will be "Research Leading to a Cure for HIV/AIDS." The meeting will focus on: the role of viral reservoirs in viral eradication; immunological and virological approaches to developing HIV/AIDS therapeutics; gene activation in the development of AIDS therapeutics; systems biology approaches to developing new and better therapeutics; and novel approaches to treating AIDS. An update will be provided on the OARAC Working Groups for Treatment and Prevention Guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level, Rockville, MD 20852.

Contact Person: Robert Eisinger, PhD, Executive Secretary, Director of Scientific and Program Operations, Therapeutics Coordinating Committee, Office of Aids Research, 5635 Fishers Lane, MSC 9310, Suite 400, Rockville, MD 20852. (301) 496–0357. *be4y@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Institute's/Center's home page: *http://www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4386 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Research Centers in Wound Healing.

Date: March 22, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. 301–594–3907. *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 22, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4383 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Minority Biomedical Research Support Applications.

Date: March 24, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18C, Bethesda, MD 20892. 301–594–2771. *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 22, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4381 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, March 7, 2011, 8 a.m. to March 7, 2011, 5:30 p.m., The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024 which was published in the **Federal Register** on February 9, 2011, 76 FR 7224.

The meeting date remains the same, the times have changed to 10 a.m. to 4 p.m., and the meeting will now be held via Teleconference at the Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20850. The meeting is closed to the public.

Dated: February 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4379 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Summer Research Experience Programs.

Date: March 15, 2011.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd, Rm 710, Bethesda, MD 20892. (301) 594–0343. *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Loan Repayment.

Date: March 18, 2011.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Inst of Nursing Research, National Institutes of Health, 6701 Democracy Blvd (DEM 1), Suite 710, Bethesda, MD 20892. 301–594–5973. *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4301 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: March 18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892. 301/435–0303.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4300 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences.

Date: March 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington National Airport, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Lawrence E Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: March 14, 2011.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)
Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301)-435–1023. *byrnesn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genetic Disease and Development.
Date: March 14, 2011.
Time: 12 p.m. to 2:20 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)
Contact Person: Cheryl M Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–1045. *corsaroc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Gene Expression and Regulation.
Date: March 18, 2011.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)
Contact Person: Richard A Currie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892. (301) 435–1219. *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR10–225: Program Project: ROSETTA Protein Modeling Software.
Date: March 22–24, 2011.
Time: 7 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: Vanderbilt University, 2301 Vanderbilt Place, Nashville, TN 37235.
Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892. (301) 435–1747. *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4298 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Mechanistic Research on CAM Natural Products (R01).
Date: March 31–April 1, 2011.
Time: 5 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Martina Schmidt, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892. 301–594–3456. *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS).

Dated: February 18, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4299 Filed 2–25–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application To Pay Off or Discharge an Alien Crewman

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0106.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Pay Off or Discharge an Alien Crewman (Form I–408). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before April 29, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will

be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Pay Off or Discharge an Alien Crewman.

OMB Number: 1651–0106.

Form Number: I–408.

Abstract: CBP Form I–408, Application to Pay Off or Discharge an Alien Crewman, is used as an application by the owner, agent, consignee, charterer, master, or commanding officer of any vessel or aircraft arriving in the United States to obtain permission from the Secretary of the Department of Homeland Security to pay off or discharge an alien crewman. The form is submitted to the CBP officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. This form is authorized by Section 256 of the Immigration and Nationality Act (8 U.S.C. 1286) and provided for 8 CFR 252.1(h). CBP Form I–408 is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_I408.pdf.*

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 85,000.

Estimated Time per Respondent: 25 minutes.

Estimated Total Annual Burden Hours: 35,360.

Dated: February 23, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–4336 Filed 2–25–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on March 17–18, 2011 at the American Institute of Architects Building, 1735 New York Avenue, NW., Washington, DC 20006. The meeting will be held in the Gallery Room. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—2011 Guidance to NGAC.
—NGAC Action Plan.
—Geospatial Platform.
—FGDC Update.
—Interagency Data Sharing and Coordination.
—NGAC Subcommittee Reports.

The meeting will include an opportunity for public comment on March 18. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by March 11, 2011. While the meeting will be open to the public, seating may be limited due to room capacity.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on March 17 and from 8:30 a.m. to 4 p.m. on March 18.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *http://www.fgdc.gov/ngac.*

Dated: February 18, 2011.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. 2011–4333 Filed 2–25–11; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912000 L16400000.PH0000 LXSS006F0000 261A; 11–08807; MO#4500020093; TAS: 14X1109]

Notice of Public Meetings: Mojave-Southern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC) will meet in Las Vegas, Nevada. The meetings are open to the public.

Dates and Times: March 16, 2011, at the Red Rock Canyon National Conservation Area (NCA) Visitor's Center, Las Vegas, Nevada; July 21, 2011, at the BLM Southern Nevada District Office, 4701 N. Torrey Pines Dr., Las Vegas, Nevada; and September 22, 2011, at the BLM Southern Nevada District Office, 4701 N. Torrey Pines Dr., Las Vegas, Nevada.

Meeting times will be made public prior to each meeting. Each meeting will include a general public comment period that will be listed in the final meeting agenda that will be available two weeks prior to each meeting.

FOR FURTHER INFORMATION CONTACT: Hillerie Patton, (702) 515–5046, E-mail: *hpatton@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion will include, but are not limited to: District Manager's reports on current program of work, Southern Nevada Public Land Management Act Round 12 review of proposals, RAC-hosted public comment periods, the BLM Battle Mountain District and Southern Nevada District Resource Management Plans, Land Use Planning, Recreation and Off-Highway Vehicle Use, Wildland Policy and Transmission Lines, subgroup reports, and other topics that may be raised by RAC members.

The final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times, will be posted on the BLM Web site at: *http://www.blm.gov/nv/st/en/res/resource_advisory.html,* and will be sent to the media at least 14 days before the meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Hillerie Patton at 702–515–5046 no later than one week before the start of each meeting.

Dated: February 16, 2011.

Mary Jo Rugwell,

Southern Nevada District Manager, RAC Designated Federal Official.

[FR Doc. 2011–4329 Filed 2–25–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–LLWO252000]

Notice of Use Authorizations; Special Recreation Permits, Other Than on Developed Recreation Sites; Adjustment in Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is adjusting certain special recreation permit fees for various recreation activities on BLM administered Public Lands and related waters. The BLM is adjusting the minimum fee for commercial, competitive and organized group activities or events.

FOR FURTHER INFORMATION CONTACT: Judi Zuckert, Recreation and Visitor Services, 202–912–7093.

SUPPLEMENTARY INFORMATION: This notice establishes that effective on March 1, 2011, the special recreation permit minimum fee for commercial special recreation permits is $100 per year. The minimum fee for both competitive and organized group activities or events is $5 per person per day, and the minimum fee for an assigned site is $200 per permit. The BLM Director is authorized to periodically adjust fees by the regulations found at 43 CFR 2832.31(b). The next fee adjustment is scheduled for March 1, 2014. The intended effect of the fee calculation process is to ensure that fees cover administrative costs of permit issuance, a fair return to the U.S. Government for use of the public lands and approach free market value in certain cases. The BLM, in coordination with the Forest Service automatically adjusts the minimum commercial, competitive, organized group and activity special recreation permit fees and minimum assigned site fee every 3 years. These fees are calculated and adjusted based on the change in the Implicit Price Deflator Index (IPDI). The IPDI is published every February as a part of the "Economic Report of the President" to Congress. The IPDI is also available from the U.S. Department of Commerce, Bureau of Economic Analysis at the following Web site: *http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&Freq=Qtr&FirstYear=2008&LastYear=2010.*

The previous fee schedule went into effect on April 1, 2008. Commercial and reserved site fees are rounded to the nearest $5. Competitive and group use fees are rounded to the nearest $1. Individual States also have the option of imposing application fees and/or establishing higher minimum fees for special recreation permits.

Authorities: 43 U.S.C. 1740, 16 U.S.C. 6802, and 43 CFR 2932.32.

Andy Tenney,

Acting, Division Chief, Recreation and Visitor Services.

[FR Doc. 2011–4340 Filed 2–25–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Indiana Dunes National Lakeshore

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460l–9(c)(1), the boundary of Indiana Dunes National Lakeshore in the State of Indiana is modified to include an additional nineteen tracts totaling 48.75 acres of land. These tracts are adjacent to the boundary of the national lakeshore and are depicted on a map entitled "Indiana Dunes National Lakeshore, Proposed Boundary Adjustment," dated October 2009, and numbered 314/80,013. Eight of the tracts are non-Federal, to be acquired by donation. The remaining eleven tracts are Federally owned.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Midwest Region Land Resources Program Center, 601 Riverfront Drive, Omaha, Nebraska 68102, (402) 661–1788. The map depicting the revision is on file and available for inspection at this address and at Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304.

DATES: The effective date of this boundary revision is February 28, 2011.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460l–9(c)(1) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. Inclusion of these lands within the national lakeshore will enable the National Park Service to better manage and protect natural and scenic resources contained thereon.

Dated: December 10, 2010.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 2011–4352 Filed 2–25–11; 8:45 am]

BILLING CODE 4310–FH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–0211–6706; 2410–OYC]

Notice of Public Meeting of the Concessions Management Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting of the Concessions Management Advisory Board.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that the 23rd meeting of the Concessions Management Advisory Board (the Board) will be held to discuss concessions issues.

DATES: The meeting date is March 17, 2011, beginning at 9 a.m.

Location: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, Virginia 22202, Tel: 703–271–5194.

FOR FURTHER INFORMATION CONTACT: National Park Service, Commercial Services Program, 1201 Eye Street, NW., Washington, DC 20005, Telephone: 202/513–7156.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The members of the Advisory Board are: Dr. James J. Eyster, Ms. Ramona Sakiestewa, Mr. Richard Linford, Mr. Phil Voorhees, Mr. Edward E. Mace, Ms. Ruth Griswold Coleman, and Ms. Michele Michalewicz.

Topics that will be presented during the meeting include:

- General Commercial Services Program Updates.
- Concession Contracting Status Update.

• Standards, Evaluations, and Rate Approval Project Update.

• Sustainability Forum—A discussion of best practices, opportunities and challenges.

• New business—Participants should come prepared to discuss current business practices regarding sustainable foods, resource conservation (energy, water), waste reduction and recycling, and green procurement (retail sales, operations).

The meeting will be open to the public; however; facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date; however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Chief, Commercial Services Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Commercial Services Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 15, 2011.

Peggy O'Dell,

Deputy Director.

[FR Doc. 2011–4351 Filed 2–25–11; 8:45 am]

BILLING CODE 4312–53–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATES: The board meeting will be held on Thursday, March 10, 2011, 11:30 a.m.–5 p.m., ET, and Friday, March 11, 2011, 9 a.m.–12:30 p.m. ET, and from 3:30–5 p.m. ET, if necessary. Please refer to the NCD Web site (*http://www.ncd.gov*) for any late changes to the meeting times.

PLACE: The board meeting will occur in two different locations. On Thursday, March 10, 2011, the meeting will occur in the offices of Mayer Brown LLP, 1999 K Street, NW., Washington, DC 20006. On Friday, March 11, 2011, the meeting will occur at the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC 20004.

MATTERS TO BE CONSIDERED: The tentative agenda for the board meeting includes annual ethics training, a demonstration of the agency's Web site redesign, a possible speaker from the U.S. Department of Health and Human Services, the "Living" regional forum, a review of the agency's budget and strategic plan implementation, and other items, to be determined. A portion of the meeting from 3:30–5 p.m., on Friday, March 11, 2011 may be closed to discuss internal personnel rules and practices, pursuant to paragraph (c)(2) of the Sunshine Act, and in accordance with a determination made by the NCD Chairman.

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: Those who plan to attend and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: February 24, 2011.

Aaron Bishop,

Executive Director.

[FR Doc. 2011–4463 Filed 2–24–11; 11:15 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sunshine Act Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services (IMLS), NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of the forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of the meeting is required under the Sunshine in Government Act.

TIME AND DATE: Thursday, February 24, 2011 from 1 p.m. to 4 p.m.

AGENDA: Twentieth Meeting of the National Museum and Library Service Board Meeting: 1 p.m.–4 p.m. Executive Session (Closed to the Public).

PLACE: The meetings will be held in the Board room at the Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

TIME AND DATE: Friday, February 25, 2011 from 9:30 a.m. to 12:30 p.m.

AGENDA: Twentieth National Museum and Library Services Board Meeting: 9:30 a.m.–12:30 p.m. Twentieth National Museum and Library Services Board Meeting:

I. Welcome
II. Approval of Minutes
III. Financial Update
IV. Legislative Update
V. Board Program
VI. Board Updates
VII. Adjournment

(Open to the Public)

PLACE: The meetings will be held in the Board room at the Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4676.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Events and Board Liaison, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036, Telephone: (202) 653–4676.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The Executive Session on Thursday, February 24, 2011, will be closed pursuant to subsections (c)(4) and (c)(9) of section 552b of Title 5, United States Code because the Board will consider

information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. The meeting from 9:30 a.m. until 12:30 p.m. on Friday, February 25, 2011 is open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1800 M Street, NW., 9th Fl., Washington, DC 20036. Telephone: (202) 653–4676; TDD (202) 653–4614 at least seven (7) days prior to the meeting date.

Dated: February 17, 2011.

Nancy Weiss,

General Counsel.

[FR Doc. 2011–4119 Filed 2–25–11; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Public Availability of the National Endowment for the Arts' FY 2010 Service Contract Inventory

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Endowment for the Arts is publishing this notice to advise the public of the availability of its FY 2010 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2010. The information is organized by function to show how contracted resources are distributed throughout the Agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The National Endowment for the Arts has posted its inventory and a summary of the inventory on its Web site at the following link: *http://www.arts.gov/about/Commercial/index.html.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Ned Read in the Office of the Deputy Chairman for Management and Budget at 202–682–5782 or *readn@arts.gov.*

Dated: February 23, 2011.

Kathy Plowitz-Worden,

Office of Guidelines and Panel Operations, National Endowment for the Arts.

[FR Doc. 2011–4342 Filed 2–25–11; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0046]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1254, "Qualification of Connection Assemblies for Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Satish Aggarwal, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7627 or e-mail: *Satish.Aggarwal@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), entitled "Qualification of Connection Assemblies for Nuclear Power Plants," is temporarily identified by its task number, DG–1254, which should be mentioned in all related correspondence. DG–1254 is proposed Revision 1 of Regulatory Guide 1.156, dated November 1987.

This guide describes a method that the NRC considers acceptable for complying with the Commission's regulations on the environmental qualification of connection assemblies and environmental seals in combination with cables or wires as assemblies for service in nuclear power plants. The environmental qualification helps ensure that connection assemblies can perform their safety functions during and after a design-basis event.

Title 10 of the Code of Federal Regulations, Part 50, "Domestic Licensing of Production and Utilization Facilities" (10 CFR Part 50), Appendix B, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," Criterion III, "Design Control," requires, in part, that test programs used to verify the adequacy of specific design features include suitable qualification testing of a prototype unit under the most adverse design conditions.

In 10 CFR 50.49, "Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants," the NRC requires that certain electric equipment important to safety be qualified for its application and specified performance. The regulation also identifies requirements for establishing environmental qualification methods and qualification parameters.

II. Further Information

The NRC staff is soliciting comments on DG–1254. Comments may be accompanied by relevant information or supporting data and should mention DG–1254 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Comments would be most helpful if received by April 27, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0046 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their

comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0046. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1254 is available electronically under ADAMS Accession Number ML102090535. In addition, electronic copies of DG–1254 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* The regulatory analysis may be found in ADAMS under Accession No. ML102090536.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0046.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland this 18th day of February, 2011.

For the Nuclear Regulatory Commission.

Richard A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–4344 Filed 2–25–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 070–0925; NRC–2011–0042]

License Transfer Order for the Cimarron Facility at Crescent, OK

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of transfer of License SNM–928 from Cimarron Corporation to the Cimarron Environmental Response Trust.

DATES: Requests for a hearing or leave to intervene must be filed by March 21, 2011.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0042 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0042. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine, and have copied for fee, publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Transfer Order is provided at the end of this notice and is available electronically under ADAMS Accession Number ML110280485.

Federal rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0042.

FOR FURTHER INFORMATION CONTACT: Ken Kalman, Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: 301–415–6664; fax number 301–415–5369; e-mail: *kenneth.kalman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has signed an Order (copy included) dated February 14, 2011, transferring Source Material License SNM–928 for the Cimarron Facility in Crescent, Oklahoma to the Cimarron Environmental Response Trust (Trust). The Trust will be administered by Environmental Properties Management, LLC.

II. Summary

On January 12, 2009, Tronox Incorporated and 14 of its affiliates (collectively "Debtors") filed voluntary petitions for reorganization under Chapter 11, Title 11 of the United States Code, 11 U.S.C. 1101 *et seq.,* as amended, in the United States Bankruptcy Court, Southern District of New York. Cimarron Corporation, a

wholly owned subsidiary of Tronox Incorporated, an NRC licensee, is a debtor in that case. On January 12, 2009, Debtors also informed the NRC by letter of the bankruptcy filing. By letter dated February 11, 2009, the NRC notified Cimarron Corporation of its continuing obligations under its NRC license to comply with NRC requirements. On January 26, 2009, the NRC advised the United States Department of Justice ("DOJ") of its interest in the bankruptcy proceeding and on June 22, 2009, at DOJ's request, the NRC submitted a Proof of Claim Referral.

Subsequently, Debtors and DOJ, on behalf of and together with certain Federal and State entities including the NRC, entered into settlement discussions with regard to certain sites owned by Debtors including sites with known or potential environmental contamination that are the subject of clean-up obligations under Federal, Tribal, and State environmental laws. Those discussions resulted in the development of a global environmental settlement agreement (Settlement Agreement). On November 23, 2010, the proposed Settlement Agreement was filed with the Bankruptcy Court. On January 26, 2011, the Bankruptcy Court entered an Order approving the Settlement Agreement.

The NRC, which had filed claims in bankruptcy against Cimarron Corporation, entered into the Settlement Agreement rather than involve the NRC in a protracted legal dispute over the limited funds that would be available for site remediation from Cimarron Corporation assets. The NRC believes that measures taken pursuant to the Settlement Agreement will permit remediation of the Cimarron Site to proceed in a timelier manner and will maximize the amount of funding available for the remediation of the Cimarron Site.

The Settlement Agreement provides that on the date that the Settlement Agreement becomes effective ("Effective Date"), Debtors will transfer all of their right, title and interest related to the Cimarron Site to the Cimarron Environmental Response Trust (Cimarron Trust). In accordance with the Settlement Agreement, the purpose of the Cimarron Trust shall be to: (i) Act as successor to Debtors solely for the purpose of performing, managing, and funding implementation of all decommissioning and/or site control and maintenance activities pursuant to the terms and conditions of the Cimarron License and an NRC-approved decommissioning plan, and all environmental actions required under Federal or State law; (ii) own the Cimarron Site; (iii) carry out administrative functions related to the performance of work by or on behalf of the Cimarron Site; (iv) fulfill other obligations as set forth in the Settlement Agreement; (v) pay certain regulatory fees and oversight costs; and (vi) ultimately sell, transfer or otherwise dispose or facilitate the reuse of all or part of the Cimarron trust assets, if possible. In conjunction with the development of the Settlement Agreement, DOJ, the NRC, and the State of Oklahoma undertook to identify a Trustee to administer the Cimarron Trust. Environmental Properties Management, LLC, not individually but solely in its representative capacity as Cimarron Trustee, has been appointed as the Cimarron Trustee to administer the Cimarron Trust and the Cimarron Trust Accounts, in accordance with the Settlement Agreement and a Cimarron Environmental Response Trust Agreement ("Cimarron Trust Agreement") materially consistent with the Settlement Agreement to be separately executed by the parties.

The Settlement Agreement further provides that on or before the Effective Date, with the approval of the NRC and in accordance with the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and applicable regulations in 10 CFR part 70, the Radioactive Materials License SNM–928 held by Cimarron Corporation shall either be transferred to the Cimarron Trust; be transferred to Environmental Properties Management, LLC; or be transferred to a person or entity retained by the Cimarron Trustee and approved by NRC to hold the Cimarron License, pursuant to an Order Transferring License issued by the NRC.

III. NRC Review

The NRC staff reviewed the settlement agreement and the Cimarron Trust Agreement and determined that the Trustee has agreed to take the necessary steps to undertake remediation of the site to the extent permitted by the funds available to the Trust in accordance with this order.

Remediation of the Cimarron Site is to be conducted in accordance with the terms and conditions of License SNM–928, the Settlement Agreement, and the Cimarron Trust Agreement. The Trustee has agreed to these terms and conditions.

The Trustee's maintenance of the site and administration of the site in accordance with License SNM–928, the terms of the Settlement Agreement, the Cimarron Trust Agreement, and the terms of this Order, will provide adequate protection of the public health and safety and reasonable assurance of compliance with the Commission's regulations.

Pursuant to the terms of the Settlement Agreement, DOJ in coordination with the NRC, and the State of Oklahoma, selected Environmental Properties Management, LLC, as Trustee. Environmental Properties Management, LLC, is qualified to perform the duties enumerated in this Order.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency-wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Settlement Agreement dated January 26, 2011, ML110320603; and the Environmental Response Trust Agreement dated February 14, 2011, ML110450212. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

V. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, § 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North,11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 800–397–4209 or 301–415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

VI. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and

telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Atomic Safety and Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, County, Municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by March 21, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by March 21, 2011.

VII. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format

(PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 20 days from February 28, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Dated at Rockville, Maryland, this 16th day of February, 2011.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

United States of America

Nuclear Regulatory Commission

[Docket No. 70–0925]

License No. SNM–928

In the Matter of Cimarron Corporation, Oklahoma City, OK; Order Transferring License No. SNM–928 for the Cimarron Site

I

Cimarron Corporation is the holder of License SNM–928, which authorizes the possession of Byproduct, Source, and/or Special Nuclear Material at the Cimarron Site in Crescent, Oklahoma. In accordance with Amendment No. 20 of the license, the license will not expire until the United States Nuclear Regulatory Commission ("NRC") terminates it.

II

The Kerr-McGee Corporation (KMC) operated two plants at the Cimarron Site between 1965 and 1975, each under its own separate Atomic Energy Commission license. Radioactive Materials License SNM–928 (Docket No. 70–0925) was issued under 10 CFR part 70 for the Uranium Fuel Fabrication Facility, and Radioactive Materials License SNM–1174 (Docket No. 70–1193) was issued under 10 CFR part 70 for the Mixed Oxide Fuel Fabrication (MOFF) Facility.

Subsequently, on October 26, 1988, Cimarron Corporation, a wholly-owned subsidiary of KMC, became responsible for the Cimarron Site (License SNM–928, Amendment 6). After Cimarron Corporation ceased operations, NRC terminated Radioactive Materials License SNM–1174 by letter dated February 5, 1993. Although Radioactive Materials License SNM–1174 was terminated, the MOFF plant building exterior surfaces and grounds were retained under Radioactive Materials License SNM–928. Cimarron Corporation began decommissioning in 1977. As part of its decommissioning program, Cimarron Corporation divided the site into 3 major areas (Areas I–III) which were subdivided into 15 discrete subareas (Subareas A–O). To date, most of the decommissioning activities needed for release of the Cimarron Site for unrestricted use and to terminate Radioactive Materials License SNM–928 have been completed. The remaining activities to be completed include the release of Subareas F, G, and N as well as groundwater remediation. Groundwater contamination has been identified in Subareas F and C, as well as in the western upland and the western alluvial areas of the site.

Final status surveys and confirmatory surveys have confirmed that Subareas G and N are releasable for unrestricted use, but NRC has determined that these areas should not be released until groundwater remediation is complete. Because groundwater exceeds license criteria in Subarea F, this area cannot be released for unrestricted use until groundwater remediation is complete.

In November 2005, KMC transferred ownership of Cimarron Corporation to Tronox Incorporated. Cimarron Corporation considered several alternatives for groundwater remediation including natural attenuation, excavation, bioremediation, and the use of institutional controls. On

December 11, 2006, Cimarron Corporation submitted its proposal to use bioremediation.

The NRC staff conducted an expanded acceptance review of the December 11, 2006, bioremediation proposal. By letter dated March 28, 2007, the NRC rejected the proposal because deficiencies in the information provided precluded the staff from conducting a detailed technical review. On June 2, 2008, Cimarron Corporation submitted a revised license amendment request for the use of bioremediation and supplemented the request with additional information on September 5, 2008. The staff had several interactions with Cimarron Corporation which resulted in Cimarron Corporation submitting a revised Groundwater Decommissioning Plan on March 31, 2009. The staff completed its acceptance review of the Groundwater Decommissioning Plan on May 19, 2009.

The NRC has determined that the Cimarron facility poses no immediate threat to public health and safety.

III

On January 12, 2009, Tronox Incorporated and 14 of its affiliates (collectively "Debtors") filed voluntary petitions for reorganization under Chapter 11, Title 11 of the United States Code, 11 U.S.C. 1101 *et seq.,* as amended, in the United States Bankruptcy Court, Southern District of New York. Cimarron Corporation, a wholly owned subsidiary of Tronox Incorporated, an NRC licensee, is a debtor in that case. On January 12, 2009, Debtors also informed the NRC by letter of the bankruptcy filing. By letter dated February 11, 2009, the NRC notified Cimarron Corporation of its continuing obligations under its NRC license to comply with NRC requirements. On January 26, 2009, the NRC advised the United States Department of Justice (DOJ) of its interest in the bankruptcy proceeding and on June 22, 2009, at DOJ's request, the NRC submitted a Proof of Claim Referral.

Subsequently, Debtors and DOJ, on behalf of and together with certain Federal and State entities including the NRC, entered into settlement discussions with regard to certain sites owned by Debtors including sites with known or potential environmental contamination that are the subject of clean-up obligations under Federal, Tribal, and State environmental laws. Those discussions resulted in the development of a global environmental settlement agreement (Settlement Agreement). On November 23, 2010, the proposed Settlement Agreement was filed with the Bankruptcy Court. On January 26, 2011, the Bankruptcy Court entered an order approving the Settlement Agreement.

The NRC, which had filed claims in bankruptcy against Cimarron Corporation, entered into the Settlement Agreement rather than involve the NRC in a protracted legal dispute over the limited funds that would be available for site remediation from Cimarron Corporation assets. The NRC believes that measures taken pursuant to the Settlement Agreement will permit remediation of the Cimarron Site to proceed in a timelier manner and will maximize the amount of funding available for the remediation of the Cimarron Site.

The Settlement Agreement provides that on the date that the Settlement Agreement becomes effective ("Effective Date"), Debtors will transfer all of their right, title and interest related to the Cimarron Site to the Cimarron Environmental Response Trust ("Cimarron Trust"). In accordance with the Settlement Agreement, the purpose of the Cimarron Trust shall be to: (i) Act as successor to Debtors solely for the purpose of performing, managing, and funding implementation of all decommissioning and/or site control and maintenance activities pursuant to the terms and conditions of the Cimarron License and an NRC-approved decommissioning plan, and all environmental actions required under Federal or State law; (ii) own the Cimarron Site; (iii) carry out administrative functions related to the performance of work by or on behalf of the Cimarron Site; (iv) fulfill other obligations as set forth in the Settlement Agreement; (v) pay certain regulatory fees and oversight costs; and (vi) ultimately sell, transfer or otherwise dispose or facilitate the reuse of all or part of the Cimarron Trust assets, if possible. In conjunction with the development of the Settlement Agreement, DOJ, the NRC, and the State of Oklahoma undertook to identify a Trustee to administer the Cimarron Trust. Environmental Properties Management, LLC, not individually but solely in its representative capacity as Cimarron Trustee, has been appointed as the Cimarron Trustee to administer the Cimarron Trust and the Cimarron Trust Accounts, in accordance with the Settlement Agreement and a Cimarron Environmental Response Trust Agreement ("Cimarron Trust Agreement"), materially consistent with the Settlement Agreement to be separately executed by the parties.

The Settlement Agreement further provides that on or before the Effective Date, with the approval of the NRC and in accordance with the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) and applicable regulations in 10 CFR part 70, the Radioactive Materials License SNM–928 held by Cimarron Corporation shall either be transferred to the Cimarron Trust; be transferred to Environmental Properties Management, LLC, or be transferred to a person or entity retained by the Cimarron Trustee and approved by NRC to hold the Cimarron License pursuant to an Order Transferring License issued by the NRC. NRC has been informed that the effective date of the settlement agreement is February 14, 2011.

IV

Remediation of the Cimarron Site is to be conducted in accordance with the terms and conditions of License SNM–928, the Settlement Agreement, and the Cimarron Trust Agreement. The Trustee has agreed to these terms and conditions.

The Trustee's maintenance of the site and administration of the site in accordance with License SNM–928, the terms of the Settlement Agreement, the Cimarron Trust Agreement, and the terms of this Order, will provide adequate protection of the public health and safety and reasonable assurance of compliance with the Commission's regulations.

Pursuant to the terms of the Settlement Agreement, DOJ in coordination with the NRC, and the State of Oklahoma, selected Environmental Properties Management, LLC, as Trustee. Environmental Properties Management, LLC, is qualified to perform the duties enumerated in this Order.

In view of the foregoing, I have authorized the transfer of License SNM–928 to the Cimarron Trust, such license to be amended to reflect the change in the named licensee and an effective date coinciding with the effective date of the Settlement Agreement. The Trustee accedes to this Order voluntarily, and has agreed to take the necessary steps to undertake remediation of the site to the extent permitted by the funds available to the Trust, according to the requirements in Part V of this Order.

V

Accordingly, pursuant to Sections 53, 62, 161(b), 161(i),161(o), and 184 of the Atomic Energy Act of 19154, as amended (42 U.S.C. *et seq.*), and the Commission's regulations in 10 CFR part 70, *it is hereby ordered* that, effective February 14, 2011, License SNM–928 is transferred to the Cimarron Trust and the Trustee is authorized to

possess Byproduct, Source, and Special Nuclear Material at the Cimarron Site pursuant to the terms and conditions of License SNM–928. *It is further ordered* that:

(1) The Trustee shall comply with all conditions set forth in the Settlement Agreement and any amendments thereto, and the Cimarron Trust Agreement and any amendments thereto.

(2) Within 60 days of the date of this Order, and every 180 days thereafter, the Trustee shall submit a report to the Deputy Director, Division of Waste Management and Environmental Protection, Mailstop T8–F5, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland 20852, detailing all actions and associated actual expenditures for the previous period and a projection of actions and expenses for the subsequent period.

(3) Upon completion of the groundwater remediation and in conformance with the requirements in 10 CFR part 70 and the conditions set forth in License SNM–928, the Cimarron Trustee shall, within 30 days, conduct a radiation survey of the site, and within 90 days of completion of the radiation survey, submit a final status survey report to the Deputy Director, Mailstop T8–F5, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland 20852 for NRC review, to demonstrate that the site meets the criteria for unrestricted release.

(4) The Trustee's responsibilities, liabilities and authority under License SNM–928 shall terminate only upon Order of the NRC.

(5) No more than 5 percent of the remaining funds in the Cimarron Federal Environmental Cost Account shall be spent in any 6-month period without NRC approval.

(6) Pursuant to Paragraph 56(c)(ii) of the Settlement Agreement, the assets of the Cimarron Standby Trust Fund shall not be accessed until further Order issued by the NRC.

(7) The requirements in this Order may only be modified in writing by the Director, Office of Federal and State Materials and Environmental Management Programs.

VI

Any person adversely affected by this Order, other than Cimarron or the Trustee, may request a hearing within 20 days of its issuance. Any request for a hearing shall be submitted to Charles L. Miller, Director, Office of Federal and State Materials and Environmental Management Programs, Mailstop T8–A23, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852, and to the Trustee, Environmental Properties Management, LLC, Attn: Mr. Bill Halliburton, Administrator, Cimarron Environmental Response Trust, c/o Environmental Properties Management, LLC, 9400 Ward Parkway, Kansas City, Missouri 64114. If a hearing is requested, the requester shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by a person whose interest is adversely affected by this Order, the Commission will consider the hearing request pursuant to 10 CFR part 2, subpart M, and will issue an Order designating the time and place of any hearing. If a hearing is held, the procedures of Subpart M will be applied as provided by the Order designating the time and place of the hearing. The issue to be considered at such hearing shall be whether this Order transferring the license should be sustained. Any request for a hearing shall not stay the effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of February, 2011.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–4348 Filed 2–25–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Extension of an Expiring Information Collection 3206–0165; General Request for Investigative Information (INV 40) on Employment Data and Supervisor Information (INV 41), Personal Information (INV 42), Educational Registrar and Dean of Students Record Data (INV 43), and Law Enforcement Data (INV 44)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on the extension of an expiring information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–0165, for the General Request for Investigative Information (INV 40), the Investigative Request for Employment Data and Supervisor Information (INV 41), the Investigative Request for Personal Information (INV 42), the Investigative Request for Educational Registrar and Dean of Students Record Data (INV 43), and the Investigative Request for Law Enforcement Data (INV 44). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget (OMB) is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until March 30, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@opm.eop.gov* or faxed to (202) 395–6974; and Federal Investigative Services, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E. Street, NW., Washington, DC 20415, Attention:

Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 3(a) of Executive Order (E.O.) 10450, as amended, states that with specified exceptions, "the appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation," and that "in no event shall the investigation consist of less than a national agency check * * * and written inquiries to appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended by the persons under investigation." This minimum investigation for appointment in the civil service is called the National Agency Check with Inquiries (NACI).

The INV 40, 41, 42, 43, and 44 are used to conduct the "written inquiries" portion of the NACI. They are also used in any investigation requiring the same written inquiries, including suitability investigations under E.O. 10577, as amended and 5 CFR part 731, for employment in positions defined in 5 CFR 731.101(b); investigations for employment in a sensitive national security position under E.O. 10450, as amended and 5 CFR part 732; certain investigations for eligibility for access to classified information pursuant to standards promulgated under E.O. 12968, as amended; certain investigations for fitness for employment in the excepted service or as a contract employee, pursuant to investigative requirements prescribed by employing and contracting agencies; and investigations for identity credentials for long-term physical and logical access to Federally-controlled facilities and information systems, pursuant to standards promulgated under the Federal Information Security Management Act. The INV forms 40 and 44, in particular, facilitate OPM's access to criminal history record information under 5 U.S.C. 9101.

The content of the INV forms is also designed to meet notice requirements for personnel investigations specified by 5 CFR 736.102(c). These notice requirements apply to any "investigation * * * to determine the suitability, eligibility, or qualifications of individuals for Federal employment, for work on Federal contracts, or for access to classified information or restricted areas."

None of the forms is used for any purpose other than a personnel background investigation, as described above. The completed forms are maintained by OPM subject to the protections of the Privacy Act of 1974, as amended.

Procedurally, the subject of a personnel background investigation discloses the identity of relevant sources, such as supervisors, coworkers, neighbors, friends, current or former spouses, instructors, relatives, or schools attended, on the standard form (SF) 85, Questionnaire for Non-Sensitive Positions; the SF 85P, Questionnaire for Public Trust Positions; or the SF 86, Questionnaire for National Security Positions. After OPM receives a completed SF 85, SF 85P, or SF 86, the INV forms are distributed to the provided source contacts through an automated mailing operation.

The INV 40 is used to collect records from a Federal or State record repository or a credit bureau. The INV 44 is used to collect law enforcement data from a criminal justice agency. The INV 41, 42, and 43 are sent to employment references, associates, and schools attended. The forms disclose that the source's name was provided by the subject to assist in completing a background investigation to help determine the subject's suitability for employment or security clearance, and request that the source complete the form with information to help in this determination. Generally the subject of the investigation will identify these employment references, associates, and schools on his or her SF 85, SF 85P, or SF 86 questionnaire. If information is omitted on the questionnaire, however, the information may be provided in a follow-up contact between the subject and an investigator. By their terms, the INV 41, 42, and 43 forms are not to be sent to employment references, associates, and schools that have not been identified by the subject of the investigation.

Approximately 279,000 INV 40 inquiries are sent to Federal and non-Federal agencies annually. The INV 40 takes approximately five minutes to complete. The estimated annual burden is 23,250 hours. Approximately 2,243,000 INV 41 inquiries are sent to previous and present employers and supervisors. The INV 41 takes approximately five minutes to complete. The estimated annual burden is 186,900 hours. Approximately 1,882,000 INV 42 inquiries are sent to individuals annually. The INV 42 takes approximately five minutes to complete. The estimated annual burden is 156,800 hours. Approximately 464,000 INV 43 inquiries are sent to educational institutions annually. The INV 43 takes approximately five minutes to complete. The estimated annual burden is 38,700 hours. Approximately 1,546,000 INV 44 inquiries are sent to law enforcement agencies annually. The INV 44 takes approximately five minutes to complete. The estimated annual burden is 128,800 hours. The total number of respondents for the INV 40, INV 41, INV 42, INV 43, and INV 44 is 6,135,200 and the total estimated burden is 511,200 hours.

A notice of the proposed information collection was published in the **Federal Register** on February 2, 2010 (**Federal Register** Notices/Volume 75, Number 21, pages 5358–5359), as required by 5 CFR part 1320, affording the public an opportunity to comment on the form(s). Two (2) comments were received and are addressed as follows. The National Treasury Employees Union provided four areas of comment:

a. NTEU commented that INV 41, 42, and 43 solicit "adverse information" about the subject of the investigation that is not "relevant and necessary" to OPM's purposes. OPM believes that the forms are a reasonable means to collect information relevant to the investigations for which the forms are used. Open-ended questions are the most effective means to gather source information in an investigation, since leading questions will tend to distort responses. On January 19, 2011, the Supreme Court ruled in *National Aeronautics and Space Administration* v. *Nelson,* 131 S. Ct. 746, that the INV 42 form's "open-ended inquiries * * * are reasonably aimed at identifying capable employees who will faithfully conduct the Government's business" and that these inquiries "further the Government's interests in managing its internal operations." 131 S. Ct. at 759, 761. The forms include instructions designed to prevent irrelevant responses. Moreover, since OPM is required by executive order to make these inquiries in connection with personnel investigations, retention of the forms in OPM's system of investigative records is consistent with Privacy Act requirements.

b. NTEU commented that the INV 41, 42, and 43 require disclosure of highly personal information that is not narrowly tailored to meet the government's needs. OPM rejects the commenter's assertion. The Supreme Court ruled in *Nelson* that the Government, "when it requests job-related personal information in an employment background check," does not have "a constitutional burden to demonstrate that its questions are 'necessary' or the least restrictive means of furthering its interests." 131 S. Ct. at 760. OPM concludes that the information collection is appropriate for the investigations in which it may be used, namely investigations of

suitability for Federal employment; investigations for employment in a sensitive national security position; investigations for eligibility for access to classified information; investigations for fitness for employment in the excepted service or as a contract employee; and investigations for identity credentials for long-term physical and logical access to Federally controlled facilities and information systems. Further, there are adequate protections against the unauthorized redisclosure of reports of investigation in the Privacy Act. *See Nelson,* 131 S. Ct. at 762–64. Additional protections are found in section 9(c) of E.O. 10450, as amended, and in agency restrictions on the release of personally identifiable information.

c. NTEU commented that the forms request information beyond that to which the employee has consented in the Authorization for Release of Information as there is no indication that information regarding general behavior and conduct will be solicited from individuals who might offer information regarding personal habits. The commenter is incorrect. The authorization is part of a questionnaire that specifically informs the subject that the investigative process is designed to develop information to show "whether you are reliable and trustworthy, and of good conduct and character."

d. NTEU commented that the forms do not adequately explain the purpose for which the information is sought and its routine nature, and therefore allow the reference to infer that the subject is under suspicion of wrongdoing. OPM has received no evidence to support this suggestion during its longstanding use of these forms. The form instructions make clear that the form is part of a background vetting process, not part of a criminal or disciplinary proceeding.

An OPM investigator commented that the INV 44 should instruct responding law enforcement agencies to withhold traffic violations if the fine was less than $300 and did not involve alcohol or drugs, since subjects of national security investigations are not required to disclose such violations on their SF 86, Questionnaire for National Security Positions. OPM does not accept this recommendation at this time because (1) the INV 44 is used for investigations based on other investigative questionnaires (SF 85, SF 85P) which do not include exceptions for traffic violations that resulted in fines less than $300; and (2) subjecting responding law enforcement agencies to the burden of parsing such violations from their records when responding to OPM requests may deter responses or result in response errors.

OPM is proposing to modify INV forms 40, 41, and 42 to provide instruction to respondents to mark, by making a check, when the respondent requests confidentiality of his or her identity, and to call an office at OPM to receive approval of the request before completing the form. The purpose of this change is to more clearly establish the granting of confidentiality as permitted by the Privacy Act of 1974 and OPM's implementing regulations.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–4353 Filed 2–25–11; 8:45 am]

BILLING CODE 6325–53–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 3, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 3, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

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

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

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

Dated: February 24, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–4500 Filed 2–24–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Bio-Life Labs, Inc., BSI2000, Inc., Calais Resources, Inc., EGX Funds Transfer, Inc., Great Western Land Recreation, Inc. (a/k/a Great Western Land and Recreation, Inc.), and Id-CONFIRM, Inc., Order of Suspension of Trading

February 24, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bio-Life Labs, Inc. because it has not filed any periodic reports since the period ended March 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BSI2000, Inc. because it has not filed any periodic reports since the period ended December 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Calais Resources, Inc. because it has not filed any periodic reports since the period ended August 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EGX Funds Transfer, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Great Western Land Recreation, Inc. (a/k/a Great Western Land and Recreation, Inc.) because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Id-CONFIRM, Inc. because it has not filed any periodic reports since the period ended March 31, 2007.

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

companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 24, 2011, through 11:59 p.m. EST on March 9, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–4496 Filed 2–24–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63946; File No. SR–MSRB–2011–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendments to Rule G–23, on Activities of Financial Advisors

February 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act" or "the "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 9, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the SEC a proposed rule change consisting of (i) proposed amendments to Rule G–23 (activities of financial advisors) and (ii) a proposed interpretation of Rule G–23 (the "proposed interpretive notice"). The MSRB requests that the proposed rule change be made effective for new issues for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than six (6) months after SEC approval to allow issuers of municipal securities time to finalize any outstanding transactions that might be affected by the proposed rule change.

The text of the proposed rule change is available on the MSRB's Web site at *http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Currently Rule G–23, on activities of financial advisors, sets forth the circumstances under which a broker, dealer, or municipal securities dealer ("dealer") acting as a financial advisor to an issuer with respect to a new issue or issues of municipal securities ("dealer financial advisor") may acquire all or any portion of such issue, directly or indirectly, from the issuer as a principal, or may act as agent for the issuer in arranging the placement of such issue, either alone or as a participant in a syndicate or other similar account formed for that purpose. For negotiated transactions, Rule G–23(d)(i) requires that: (i) The dealer terminate the financial advisory relationship with regard to the issue and at or after such termination the issuer expressly consent in writing to such acquisition or participation; (ii) at or before such termination, the dealer disclose in writing to the issuer that there may be a conflict of interest in changing from the capacity of financial advisor to that of purchaser of or placement agent for the securities and the issuer expressly acknowledges in writing to the dealer receipt of such disclosure; and (iii) the dealer disclose in writing to the issuer at or before such termination the source and anticipated amount of all remuneration to the dealer with respect to such issue and the issuer expressly acknowledge in writing to the dealer receipt of such disclosure. With respect to issues sold by competitive bid, Rule G–23(d)(ii) provides that a financial advisor must obtain the issuer's written consent prior to making a bid for the issue.

The limitations of Rule G–23(d) also apply to affiliates of the dealer financial advisor; however, they do not apply to purchases by dealer financial advisors of securities from an underwriter, either for the account of the dealer financial advisor or for the account of customers of the dealer financial advisor, except to the extent that such purchases are made to contravene the purpose and intent of the rule.

In addition, Rule G–23(e) provides that a dealer that has a financial advisory relationship with respect to a new issue of municipal securities may not act as agent for the issuer in remarketing such issue unless the dealer has disclosed in writing to the issuer: (i) That there may be a conflict of interest in acting as both financial advisor and remarketing agent for the securities; and (ii) the source and basis of the remuneration the dealer could earn as remarketing agent on such issue. The dealer must receive from the issuer its express acknowledgement, in writing, of its receipt of such disclosure and its consent to the financial advisor acting in both capacities along with the source and basis of remuneration.

The proposed amendments would, subject to the exceptions described below, (i) prohibit a dealer financial advisor with respect to the issuance of municipal securities from acquiring all or any portion of such issue directly or indirectly, from the issuer as principal, or acting as agent for the issuer in arranging the placement of such issue, either alone or as a participant in a syndicate or other similar account formed for that purpose; (ii) apply the same prohibition to any dealer controlling, controlled by, or under common control with the dealer financial advisor; and (iii) prohibit a dealer financial advisor from acting as the remarketing agent for such issue.

The proposed amendments would not prohibit: (i) A dealer financial advisor from placing an issuer's entire issue with another governmental entity, such as a bond bank, as part of a plan of financing by such entity for or on behalf of the dealer financial advisor's issuer client; [3] (ii) a dealer financial advisor from serving as successor remarketing agent to an issuer for the same issue with respect to which it provided financial advisory services if the financial advisory relationship with the issuer had been terminated for at least

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The exception would only apply if the dealer financial advisor did not receive compensation for the placement of such issue and the dealer financial advisor was not compensated as an underwriter in connection with any related transaction undertaken by the governmental entity with which such issue is placed.

one (1) year; or (iii) a dealer financial advisor from purchasing such securities from an underwriter, either for its own trading account or for the account of its customers, except to the extent that such purchase was made to contravene the purpose and intent of the rule.

The proposed amendments would change references in Rule G–23 to "a new issue or issues of municipal securities" to "the issuance of municipal securities" to conform the language of the rule to the language used in Section 15B of the Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). This change in language is not intended to change the meaning or operation of Rule G–23.

The proposed amendments would also amend Rule G–23(b) to remove the requirement that financial advisory services be provided for compensation. This change is also proposed to conform the rule to the provisions of Section 15B of the Act as amended by Dodd-Frank, which does not require that financial advisors receive compensation in order to be considered "municipal advisors."

The proposed interpretive notice would provide guidance on when a dealer that provides advice to an issuer would be considered to be "acting as an underwriter" for purposes of Rule G–23(b), rather than a financial advisor. Under the proposed guidance, a dealer providing advice to an issuer with respect to the issuance of municipal securities (including the structure, timing, and terms of the issue and other similar matters, such as the investment of bond proceeds, a municipal derivative, or other matters integrally related to the issue) generally would not be viewed as a financial advisor for purposes of Rule G–23, if such advice is rendered in its capacity as underwriter for such issue and the dealer clearly identifies itself as an underwriter from the earliest stages of its relationship with the issuer with respect to that issue. Nevertheless, a dealer's subsequent course of conduct (*e.g.,* representing to the issuer that it is acting only in the issuer's best interests, rather than as an arm's length counterparty, with respect to that issue) could cause the dealer to be considered a financial advisor with respect to such issue and such dealer would be precluded from underwriting that issue by Rule G–23(d).

The proposed rule change resulted from a concern that a dealer financial advisor's ability to underwrite the same issue of municipal securities, on which it acted as financial advisor, presented a conflict that is too significant for the existing disclosure and consent provisions of Rule G–23 to cure. Even in the case of a competitive underwriting, the perception on the part of issuers and investors that such a conflict might exist was sufficient to cause concern that permitting such role switching was not consistent with "a free and open market in municipal securities," which the Board is mandated to perfect.

The imposition by Dodd-Frank of a fiduciary duty upon municipal advisors,[4] which includes financial advisors, made the existence of such a conflict a greater concern.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Act, which provides that:

> The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Act, provides that the rules of the MSRB shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Act because it would prevent conflicts of interest, whether actual or perceived, caused by a dealer financial advisor serving as underwriter or placement agent for an issue of municipal securities for which it provided financial advisory services. Accordingly, the proposed rule change would help protect municipal entities and help to perfect the mechanism of a free and open market in municipal securities to the benefit of investors, municipal entities, and the public interest.

Section 15B(b)(2)(L)(iv) of the Act requires that rules adopted by the Board:

> Not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

The proposed rule change would principally affect dealer financial advisors that are not small municipal advisors. Furthermore, it is likely that those dealer financial advisors that are small municipal advisors primarily serve as financial advisors to issuers of municipal securities that do not access the capital markets frequently and, when they do so, issue securities in small principal amounts. Those issuers may be less likely than larger, more frequent issuers to understand the conflict presented when their financial advisors also underwrite their securities. Accordingly, while the proposed rule change might burden some small municipal advisors, any such burden is outweighed by the need to protect their issuer clients.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would not burden competition among dealer financial advisors since it would apply equally to all such dealer financial advisors. In some cases the proposed rule change could reduce the number of dealers competing to underwrite an issuer's issue of municipal securities, if the issuer has employed a dealer financial advisor that is prohibited by the proposed rule change from seeking to underwrite such issuance. It could also reduce the number of dealers competing to serve as financial advisor for an issuer's issuance of municipal securities, if such dealers wished to act as underwriter or placement agent for such issue. Nevertheless, the MSRB does not believe that any such burden on competition is greater than is necessary or appropriate in furtherance of the purposes of the Exchange Act, because such burden is outweighed by the need to protect issuers as described above.

[4] Dodd-Frank amended Section 15B(c)(1) of the Act to provide that:

> A municipal advisor and any person associated with such municipal advisor shall be deemed to have a fiduciary duty to any municipal entity for whom such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's fiduciary duty or that is in contravention of any rule of the Board.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On August 17, 2010, the MSRB requested comment on the portion of the proposed rule change consisting of amendments to Rule G–23.[5] A copy of the Notice can be viewed at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-27.aspx?n=1.* The MSRB received 73 comment letters. An index to the comment letters received in response to the Notice can be viewed at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2010/2010-27.aspx?n=1,* and copies of the comment letters received in response to the Notice can also be accessed through that Web site. In addition, these documents, submitted with MSRB's filing as Exhibits 2a, 2b, and 2c, respectively, can be viewed at the Commission's Web site at: *http://www.sec.gov/rules/sro/msrb.shtml,* under the heading SR–MSRB–2011–03. A discussion of the comments and the MSRB's responses follows.

In its request for comment, the MSRB posed the following questions:

1. Should a dealer be precluded for a specific timeframe from entering into a financial advisory relationship with an issuer after serving as an underwriter on one of the issuer's prior offerings of securities?

2. If the MSRB were to amend Rule G–23 to prohibit dealers from serving as underwriter on transactions for which they have served as financial advisor to the issuer, should there be an exception for competitively bid transactions? Would it matter if the notice of sale was made available 5–7 business days before a competitively bid transaction to allow additional time for other competing firms to conduct due diligence? Should a financial advisor be allowed to bid in a competitively bid transaction in which a failed bid had occurred? How would the situation be handled in which there is a failed bid and the financial advisor cannot step in to buy the bonds because of the prohibition? Is this a common occurrence?

3. Are there small and/or infrequent issuers that will be negatively affected by the proposed prohibition? What are the alternatives and costs for such issuers should the MSRB adopt the proposed draft rule amendment?

4. Is it appropriate for a dealer to serve as financial advisor to an issuer at the same time that it serves as underwriter on a separate issue for the same issuer?

5. As it relates to current practices, are there instances in competitively bid transactions in which a financial advisor should resign in order to "officially" bid on a competitive issuance transaction as an underwriter? Is there ever a time when the financial advisor does not conduct the bid process for the issuer, such as the use of electronic bidding platforms where the process of collecting bids is done by a third party on behalf of the issuer? Is it an uncommon practice for the bid process to be handled internally by the issuer?

6. In the context of a primary offering, should the exception found in Rule G–23(d)(iii) be limited to situations in which a financial advisor purchases bonds from underwriters who won a competitive bid for the bonds in which multiple bids were received?

7. In competitively bid transactions, are there situations where the issuer may hire a financial advisor to serve on a specific issue and then, at some point, hire a second financial advisor to oversee the competitive bid process in order to allow the original financial advisor to bid on the issue?

Discussion of Comment Letters

The comments are summarized by topic as follows:

Conflicts of Interest

A trade association for non-dealer financial advisors stated that there is an unacceptable and/or inherent conflict of interest when a dealer financial advisor for an issue becomes an underwriter for the same issue.[6] An association for finance officers of State and local governments noted that it has encouraged the MSRB to adopt changes to the rule to prohibit such role switching for many years because of the conflicts of interest and as a caution to issuers.[7] An issuer stated that hiring non-dealer financial advisors provides "greater assurance of conflict-free advice."[8] A non-dealer financial advisory service to small and medium sized local governments and school districts stated, "[T]he roles and objectives of issuers and underwriters are so clearly diametrically opposed that the conflict of interest in an underwriter acting as financial advisor to an issuer can never be overcome."[9] Another non-dealer financial advisory firm noted that the possibility of conflicts of interest are real and, in fact, frequently arise when firms are allowed to serve as both financial advisor and underwriter on a transaction.[10]

The GFOA Letter described GFOA's Best Practices[11] as the basis for its response and noted that issuers should be aware of and avoid the conflicts of interest that arise when a financial advisor resigns to become the underwriter on a transaction. The GFOA Best Practices provide that "issuers must keep in mind that the roles of the underwriter and the financial advisor are separate, adversarial roles and cannot be provided by the same party." One issuer noted that allowing a dealer financial advisor to underwrite a negotiated issue stands in direct conflict with the GFOA Best Practices and two issuers provided form letters that expressed their support of the GFOA Best Practices.[12]

One issuer provided an example of a dealer financial advisor requesting that the city sign a revised agreement permitting the dealer to temporarily terminate its financial advisory relationship so that it could provide underwriting services. The revised agreement provided that, "It is necessary to point out that such an action could,

[5] *See* MSRB Notice 2010–27 (August 17, 2010) ("Notice"). The changes proposed to be made to Rule G–23 that are designed to conform the language of the rule to the language used in Section 15B of the Act, as described above, were not the subject of prior public comment. In addition, the portion of the proposed rule change that consists of the proposed interpretive notice was not the subject of prior public comment.

[6] *See* National Association of Independent Public Finance Advisors, Letter from Steven F. Apfelbacher, President dated September 30, 2010 ("NAIPFA Letter"); *see also* Ehlers & Associates, Letter from Michael C. Harrigan, Chairman/Senior Financial Advisor dated September 30, 2010 ("Ehlers Letter"); Independent Bond & Investment Consultants LLC, Letter from William N. Lindsay, Director and Mark N. Chapman, Director dated September 30, 2010 ("IBIC Letter"); Munistat Services, Inc., Letter from Robert F. Sikora, President dated September 30, 2010 ("Munistat Letter"); Portland, Oregon, Office of Management and Finance, Letter from Eric H. Johansen, Treasurer dated September 29, 2010 ("Portland Letter"); Specialized Public Finance Inc., Letter from Garry R. Kimball, President dated September 30, 2010 ("Specialized Public Finance Letter"); and Springsted Incorporated, Letter from Kathleen A. Aho, President dated September 29, 2010 ("Springsted Letter").

[7] *See* Government Finance Officers Association, Letter from Susan Gaffney, Director Federal Liaison Center dated September 30, 2010 ("GFOA Letter").

[8] *See* Portland, *supra* note 6.

[9] *See* Munistat Letter, *supra* note 6.

[10] *See* Lewis Young Robertson & Burningham, Inc., Letter from Scott J. Robertson, Principal dated September 22, 2010 ("Lewis Young Letter").

[11] *See* GFOA Best Practice—Selecting and Managing the Method of Sale of State and Local Government Bonds (1994 and 2007) (DEBT); GFOA Best Practice—Selecting Financial Advisors (2008) (DEBT); and GFOA Best Practice—Selecting Underwriters for Negotiated Bond Sales (2008) (DEBT) ("GFOA Best Practices").

[12] *See* Copperas Cove, Texas, Letter from Andrea Gardner, City Manager dated September 29, 2010 ("Copperas Cove Letter"); Georgetown, Texas, Letter from Micki Rundell, Chief Financial Officer dated September 8, 2010 ("Georgetown, Texas Letter"); and Portland Letter, *supra* note 6.

under certain circumstances, create a conflict of interest."[13] The issuer stated that, as an infrequent issuer, it did not understand the extent of the conflict inherent in such role switching or the availability of other options to market its bonds. The issuer further noted that the proposed amendments would assure that issuers receive unbiased advice regarding the structure of their issues and the approach to marketing their bonds. One non-dealer financial advisory firm noted, "Most issuers from our markets would be unable to provide comments because they are not clear on the difference" between non-dealer and dealer financial advisors.[14] Another advisory firm stated that the practice of role switching "deprives an issuer of the unbiased, independent advice it sought when originally retaining a financial advisor."[15]

Commenters against all or portions of the proposed amendments suggested there cannot be a one size fits all approach in the municipal market[16] and stated that they are unaware of any evidence or history of abuse that the proposed rule is designed to prevent.[17] One commenter stated, "We do not see abuses or issues in the marketplace related to Rule G–23 and, if abuses or specific concerns exist, would like to see them highlighted so that we can better understand the rationale behind the Securities and Exchange Commission's request for the MSRB to consider changes to this rule."[18] The commenter further argued that there is existing regulation under Rule G–17 that would apply to any situation in which a dealer is not acting in a fair and appropriate manner and that Rule G–23 is "an appropriately drafted rule that is serving the function that it was intended to serve."

A trade association for securities firms and banks stated, "Rule G–23 represents a comprehensive and balanced approach to potential conflicts of interest."[19] Another commenter noted "municipal clients clearly understand the potential conflict of interest that may exist when a financial advisor serves as underwriter" and that such clients are generally aware of GFOA Best Practices "which advise them of the inherent conflict of interest in allowing a financial advisor to resign in order to serve as underwriter."[20] Another commenter argued, "To suggest that an issuer is incapable of understanding an arrangement it is entering into is always a dangerous concept. Freedom of choice is an essential element in the healthy functioning of the financial markets to maximize credit availability."[21] A bank commenter stated, "In terms of negotiated financings, Rule G–23 should remain unchanged since the Rule currently in force does prevent conflicts of interest."[22] An issuer stated, "We fully comprehend the duties owed to us by a dealer financial advisor."[23] The trade association argued that the provisions that allow a dealer financial advisor to serve as underwriter on the same transaction are rarely relied upon by dealers.[24]

MSRB Response. The MSRB shares the concern of those commenters who stated that Rule G–23 permits inherent conflicts of interest, which are not cured by the disclosure and waiver provisions of the rule. While underwriters have a duty of fair dealing to issuers under Rule G–17,[25] they also have a duty to investors, whose interests are generally adverse to those of issuers. A financial advisor's sole duty is to its issuer client. The MSRB believes the proposed amendments will protect municipal entities, as the MSRB is mandated to do by Dodd-Frank, by preventing the perceived and actual conflicts of interest that arise under the existing rule.

Fiduciary Duty Concerns

Commenters in favor of the proposed amendments to Rule G–23 noted that certain sections of Rule G–23 should be eliminated or revised to ensure compliance with the provisions of Dodd-Frank.[26] One commenter[27] noted that Dodd-Frank "clearly and concisely defines the type of advice that a Municipal Advisor provides, and it does so for the purpose of delineating who owes a fiduciary duty to the issuer of municipal debt. In so doing, the Act provides an exception for brokers, dealers or municipal securities dealers serving as underwriters."[28] Another commenter argued that any rulemaking should make a clear distinction between a financial advisor and an underwriter.[29] One commenter stated that the definition of "underwriter" in Section 2(a)(11) of the Securities Act of 1933 "does not contemplate at all that underwriters will provide 'advice' to issuers."[30] Another commenter stated, "As presently written, Rule G–23 allows underwriters to provide substantially the same 'advice' as a financial advisor which is not consistent" with Dodd-Frank.[31]

The same commenter suggested that advice concerning structure, timing, terms and other similar matters that dealers are currently permitted to provide pursuant to Rule G–23 is now a function reserved for municipal advisors under Dodd-Frank. Another commenter noted, "the concept of

[13] *See* Osage Beach, Missouri, Letter from Karri Bell, City Treasurer dated August 26, 2010 ("Osage Beach Letter").

[14] *See* Ehlers Letter, *supra* note 6.

[15] *See* Columbia Capital Management, LLC, Letter from Dennis Lloyd, President dated September 29, 2010 ("Columbia Capital Letter").

[16] *See* George K. Baum & Company, Letter from Robert K. Dalton, Vice Chairman dated September 29, 2010 ("Baum Letter"); Bond Dealers of America, Letter from Mike Nicholas, Chief Executive Officer dated September 30, 2010 ("BDA Letter"); D.A. Davidson & Co., Letter from William A. Johnstone, President and Chief Executive Officer dated September 29, 2010 ("D.A. Davidson Letter"); and J.J.B. Hilliard, W.L. Lyons, LLC, Letter from Ronald J. Dieckman, Director Public Finance and Municipal Bonds dated September 30, 2010 ("Hilliard Letter").

[17] *See* Robert W. Baird & Co. Incorporated, Letter from Charles M. Weber, Associate General Counsel dated September 29, 2010 ("Baird Letter"); Piper Jaffray & Co., Letter from Frank Fairman, Managing Director, Head of Public Finance Services, and Rebecca Lawrence, Assistant General Counsel, Principal dated September 29, 2010 ("Piper Letter"); RBC Capital Markets Corporation, Letter from Christopher Hamel, Head, Municipal Finance dated September 30, 2010 ("RBC Letter"); and Securities Industry and Financial Markets Association, Letter from Leslie M. Norwood dated September 30, 2010 ("SIFMA Letter").

[18] *See* Piper Letter, *supra* note 17.

[19] *See* SIFMA Letter, *supra* note 17; *see also* BDA Letter, *supra* note 16; BMO Capital Markets GKST Inc., Letter from Robert J. Stracks, Counsel dated September 30, 2010 ("BMO Letter"); Eastern Bank Capital Markets, Letter from James N. Fox, Senior Vice President and Managing Director dated September 29, 2010 ("Eastern Bank Letter"); Fulbright & Jaworski L.L.P., Letter from Fredric A. Weber dated September 30, 2010 ("Fulbright Letter"); and RBC Letter, *supra* note 17.

[20] *See* Baird Letter, *supra* note 17.

[21] *See* BMO Letter, *supra* note 19.

[22] *See* Eastern Bank Letter, *supra* note 19.

[23] *See* Denver, Colorado, Department of Finance, Letter from R.O. Gibson, Director of Financial Management dated September 29, 2010 ("Denver Letter").

[24] *See* SIFMA Letter, *supra* note 17.

[25] *See* Reminder Notice on Fair Practice Duties to Issuers of Municipal Securities, MSRB Notice 2009–54 (Sept. 29, 2009), *reprinted in* MSRB Rule Book.

[26] *See* Fieldman, Rolapp & Associates, Letter from Thomas M. DeMars, Managing Principal dated September 30, 2010 ("Fieldman Letter"); Fiscal Advisors & Marketing, Inc., Letter from John C. Shehadi, Chairman, *et al.* dated September 30, 2010 ("Fiscal Advisors Letter"); Munistat Letter, *supra* note 6; NAIPFA Letter, *supra* note 6; and Public FA, Inc., Letter from Philip C. Dotts, President dated September 30, 2010 ("Public FA Letter").

[27] *See* WM Financial Strategies, Letter from Nathan R. Howard, Municipal Advisor dated September 28, 2010 ("WM Financial Strategies/Mr. Howard Letter").

[28] Section 15B(e)(4)(A) of the Exchange Act defines the term "municipal advisor" to include, among other things, a person that provides advice to or on behalf of a municipal entity with respect to the issuance of municipal securities, including advice with respect to the structure, timing, terms and other similar matters concerning such issues. Section 15(B)(e)(4)(C) provides that the term does not include a dealer serving as an underwriter as defined in Section 2(a)(11) of the Securities Act of 1933.

[29] *See* WM Financial Strategies, Letter from Joy A. Howard, Principal dated September 28, 2010 ("WM Financial Strategies/Ms. Howard Letter").

[30] *See* Fieldman Letter, *supra* note 26.

[31] *See* Public FA Letter, *supra* note 26.

"advice," both legally and practically, suggests a party that has no business interest in the transaction that might be contrary to that of the issuer."[32] One financial advisory firm noted that any amendments to Rule G–23 should reflect that dealers providing such advice "must be fiduciaries and therefore cannot buy the bonds."[33] One commenter noted, "At the very moment firms seek to resign as advisers, they remain issuers' fiduciaries until finalization of resignations."[34] A financial advisory firm noted that financial advisors to issuers of governmental debt are fiduciaries that must render advice and must act only in the best interests of the issuers and another firm stated, "We have observed over many years that some broker/dealers performing underwriting services engage themselves to issuers who (mistakenly) consider the underwriter to be their "financial advisor" (*i.e.,* a fiduciary working for them)."[35]

One commenter noted that the rule should reiterate that "the underwriter does not hold a fiduciary responsibility to the issuer."[36] Another commenter stated that the Board could consider modifying the existing language of Rule G–23(b) to affirm that advice is now a function reserved for financial advisors and that providing such advice on a particular transaction places the underwriter in the role of financial advisor thus precluding it from acting as underwriter on such transaction.[37] Finally, another commenter noted, "If the advisers were performing their jobs properly, and not violating their fiduciary duty so severely, they would be actively contacting potential underwriters, not attempting to grab for themselves the underwriting positions in which the advisers become issuers' adversaries."[38]

Some commenters did not see a need for the proposed changes in Rule G–23 at this time, particularly with the advent of the newly mandated fiduciary standard for municipal advisors.[39] One commenter stated that this fiduciary standard of care will "help ensure that municipal clients receive reasonable, unbiased advice from their financial advisors and eliminate the concern that financial advisors are tainted by the prospect of underwriting new issues."[40] Another commenter stated, "As to a federal fiduciary standard, every adviser has had to deal with a fiduciary obligation under state or common law long before now (and even before the SEC was created)."[41]

MSRB Response. The MSRB is concerned that the role switching currently permitted under Rule G–23 is inconsistent with a dealer financial advisor's fiduciary duty to its issuer client. This inherent conflict is too significant for disclosure and consent to cure. Some commenters[42] suggested that the proposed amendments to Rule G–23 do not go far enough, because they do not address the exception from the definition of "financial advisory relationship" in Rule G–23(b) for dealers "acting as underwriters." The MSRB believes that the proposed interpretive guidance strikes a balance between these competing concerns by providing that a dealer may not avail itself of the underwriter exception unless it maintains an arm's-length relationship with the issuer.

Issue-by-Issue Application of the Proposed Rule

One commenter expressed support for a "cooling off" period during which a dealer would not be permitted to serve as underwriter for any transaction of an issuer following the termination of the dealer's financial advisory relationship with such issuer.[43] A trade association stated, "Under Rule G–37 and the proposed changes to Rule A–3, the MSRB has established a precedent for imposing two-year bans" and believes that a financial advisor "will remain independent if precluded from serving as an underwriter for a term of two years from the expiration or termination of the financial advisory relationship."[44] Another commenter agreed with a two year ban[45] if such a time frame would be part of the proposed amendments and also noted the two-year precedent of other MSRB rules. Some commenters supported a cooling off period of at least one year and some suggested that clarification be provided to ensure that any issue covered by a financial advisory agreement be subject to the prohibition.[46] Other commenters expressed concern that if clarification is not provided, some dealers may read the proposed rule change as simply eliminating the requirement for a disclosure of conflict letter, so long as they have not yet begun work on a particular issue, and would simply resign as to one issue and underwrite another issue.[47]

Some commenters also expressed concerns regarding situations in which a dealer serves as financial advisor to an issuer while it serves as underwriter on a separate issue for the same issuer. These commenters suggested that the best interests of issuers are not protected even if the services are provided on separate transactions.[48]

However, other commenters noted that there are issuers with multiple and/or separate and distinct debt financing programs that are funded from different revenue sources and that the proposed amendments would unnecessarily restrict the pool of available dealer financial advisors available to such issuers on various transactions.[49] One of these commenters noted that any proposed prohibition that is broader than issue-by-issue "goes beyond what is necessary to ensure fair competition and would unnecessarily constrain the advice and services available to issuers."[50] Another noted that a broad amendment to Rule G–23 would result in unintended consequences that could be very unfair to dealers that engage in both financial advisory services and bond

[32] *See* Fieldman Letter, *supra* note 26.

[33] *See* Lewis Young Letter, *supra* note 10.

[34] *See* American Governmental Financial Services of Sacramento, E-mail from Robert Doty, President dated September 30, 2010 ("AGFS E-mail").

[35] *See* Ehlers Letter, *supra* note 6 and Lewis Young Letter, *supra* note 10.

[36] *See* GFOA Letter, *supra* note 7.

[37] *See* Munistat Letter, *supra* note 6.

[38] *See* AGFS E-mail, *supra* note 34.

[39] *See* Hilliard Letter, *supra* note 16; RBC Letter, *supra* note 17; and SIFMA Letter, *supra* note 17.

[40] *See* Baird Letter, *supra* note 17.

[41] *See* BMO Letter, *supra* note 19.

[42] *See* NAIPFA Letter, *supra* note 6; Public FA Letter, *supra* note 26; WM Financial Strategies/Ms. Howard Letter, *supra* note 29; and WM Financial Strategies/Mr. Howard Letter, *supra* note 29.

[43] *See* IBIC Letter, *supra* note 6.

[44] *See* NAIPFA Letter, *supra* note 6.

[45] *See* Copperas Cove Letter, *supra* note 12; *see also* Estrada Hinojosa & Company, Inc., Letter from Robert A. Estrada, Chairman and Chief Compliance Officer dated September 30, 2010 ("Estrada Letter"); Ehlers Letter, *supra* note 6; Fiscal Advisors Letter, *supra* note 26; Georgetown, Texas, *supra* note 12; Munistat Letter, *supra* note 6; Public FA Letter, *supra* note 26; Tamalpais Advisors, Inc., Letter from Jean Marie Buckley, President dated September 28, 2010 ("Tamalpais Letter"); Specialized Public Finance Letter, *supra* note 6; Springsted Letter, *supra* note 6; and WM Financial Strategies/Ms. Howard Letter, *supra* note 29.

[46] *See* Lewis Young, *supra* note 10.

[47] *See* Columbia Capital Letter, *supra* note 15; Lewis Young Letter, *supra* note 10; and Public Financial Management, Inc., Letter from F. John White, Chief Executive Officer dated September 29, 2010 ("PFM Letter").

[48] *See* NAIPFA Letter, *supra* note 6; Columbia Capital Letter, *supra* note 15; and Lewis Young Letter, *supra* note 10.

[49] *See* BDA Letter, *supra* note 16; Denver Letter, *supra* note 23; Eastern Bank Letter, *supra* note 19; Hilliard Letter, *supra* note 16; Lynn, Robert O.L., E-mail from Robert O.L. Lynn, Financial Services Consultant dated September 29, 2010 ("Lynn E-mail"); RBC Letter, *supra* note 17; Ross, Sinclaire & Associates, Letter from Murray Sinclaire, Jr., President/CEO dated September 28, 2010 ("RSA Letter"); SIFMA Letter, *supra* note 17; and Stone & Youngberg, Letter from Stone & Youngberg dated September 28, 2010 ("Stone & Youngberg Letter").

[50] *See* BDA Letter, *supra* note 16.

underwriting.[51] One commenter expressed support for proposed amendments that would "allow a regulated firm to continue to engage in non-transaction specific consulting" in order to "allow an issuer to have certainty in the relationship that they have with a firm for each specific debt transaction."[52] The same commenter noted that the "current practice of allowing a financial advisor to retain their role while involved with a private placement, which the financial advisory firm or a related bank portfolio purchases, should be eliminated."

Some commenters argued that any proposed cooling off period would be an arbitrary one, would reduce issuer choice and would decrease competition among financial advisors.[53] One of the commenters against such a period suggested that there is no reason that an issuer should be precluded from working with a dealer financial advisor for a specific timeframe because the dealer has previously underwritten a prior offering for that issuer. Another argued that no cooling off period is needed following the provision of underwriting services as there are no "potentially cognizable conflicts once the underwriter's role has ended."[54] One commenter also noted that in certain areas of the country there has been an "unfortunate movement by non-registered advisors to exclude broker-dealers/underwriters from responding to issuers' request for proposals to serve as financial advisor" and suggested that this "looks and smells like restrictive competition (anti-trust)."[55]

It was also noted that the proposed amendments to the rule would prohibit a dealer that provided financial advisory services to an issuer from providing successor remarketing agent services to the same issuer for a one year term following the termination of its financial advisory relationship. The commenter suggested "the restrictions should be as narrowly tailored as possible so as to prevent unnecessary disruption in the marketplace" and suggested a cooling off period of only three months.[56]

MSRB Response. Upon review of the comment letters, the MSRB has determined not to impose a cooling off period between the time a dealer completes a financial advisory engagement with an issuer and the time the dealer may serve as underwriter for a different issue by the same issuer. Instead, the MSRB has determined to continue to apply Rule G–23 on an issue-by-issue basis. The proposed amendments would not prohibit a dealer financial advisor from providing financial advisory services on one issue and then serving as underwriter on another issue, even if the two issues were in the market concurrently.

Nevertheless, the MSRB does consider it to be appropriate to impose a cooling off period of one year during which a dealer financial advisor could not serve as remarketing agent for the same issue of municipal securities. The MSRB believes the one year term is a significant timeframe that would more adequately address any potential or actual conflicts of interest than the three month time frame suggested by one commenter.

Small and/or Infrequent Issuers

Commenters that supported the proposed amendments to Rule G–23 generally did not support an exception to the proposed amendments for small and/or infrequent issuers.[57] One commenter asked what would constitute a small or infrequent issuer and noted that small and infrequent issuers would be the primary beneficiaries of a revised rule because they are less knowledgeable about the capital markets and consequently, are the least likely issuers to understand the conflicts of interest that arise when a dealer financial advisor switches to serve as underwriter.[58] Another noted, "We are not aware of any study proving that "small" or "infrequent" issuers have difficulty marketing their issues."[59] Others stated that small and infrequent issuers would benefit from the prohibition because they lack the market expertise necessary to defend their own interests.[60] Another commenter stated that small and infrequent issuers are the most likely to be manipulated by dealer financial advisors because such issuers lack the sophistication to know if the terms of the underwriting engagement are reasonable.[61]

A trade association stated that "if an FA is properly structuring the deal, and if the deal is rated and advertised appropriately, there should not be an adverse affect on the issuer."[62] Another commenter noted, "In our experience, the smaller, infrequent issuers have ample access to the market if the credit is sound."[63] Other commenters noted that "there are always reasonable alternatives for issuers to market their bonds," which include the use of non-dealer financial advisors and private placements with local banks and that, "Many times the smallest of issuers use governmental lenders anyway, and you have already provided for this needed exemption."[64]

Other commenters that supported the proposed amendments to Rule G–23 also noted that a fundamentally sound principle such as the proposed amendments to Rule G–23 should not be disregarded for small or infrequent issuers, as the rule as revised will provide protection against a broker's concealed self-interest and that "a prohibition would create a competitive environment" for all financial advisory firms, which would ultimately benefit issuers."[65] Finally, another commented that, if the MSRB continues to be concerned about the impact of a prohibition on role switching on smaller and infrequent issuers, it should "study the overall costs that smaller issuers incur when the financial advisor resigns to become the underwriter, versus other methods of sale."[66]

Commenters that opposed the proposed amendments to Rule G–23 generally noted concerns about the effect of the proposed amendments on smaller and/or infrequent issuers. One noted that any changes that further limit issuer choice will "in our opinion, result in adverse market consequences for

[51] Specifically, the Estrada Letter, *supra* note 45, provided examples to support a recommendation that the MSRB not prohibit dealers from providing financial advisory and/or underwriting services, at the same time, to more than one debt issuing entities of a single issuer (*e.g.,* a dealer firm should be able to provide financial advisory services to a city owned and operated water and sewer company while providing underwriting services to the same city owned and operated electric and gas utility company). The Estrada Letter also argued that such role switching should not be prohibited on various bond issuances that have more than one series, "The MSRB should not prohibit a broker/dealer who serves as financial advisor on Series 2010A from competing to serve as underwriter for B, C or D."

[52] *See* Baum Letter, *supra* note 16.

[53] *See* Denver Letter, *supra* note 23; Piper Letter, *supra* note 17; RSA Letter, *supra* note 49; and SIFMA Letter, *supra* note 17.

[54] *See* Piper Letter, *supra* note 17 and SIFMA Letter, *supra* note 17.

[55] *See* FirstSouthwest, Letter from Hill A. Feinberg, Chairman and CEO dated September 29, 2010 ("FirstSouthwest/Mr. Feinberg 2 Letter").

[56] *See* SIFMA Letter, *supra* note 17.

[57] *See* Fieldman Letter, *supra* note 26; GFOA Letter, *supra* note 7; IBIC Letter, *supra* note 6; Lewis Young Letter, *supra* note 10; PFM Letter, *supra* note 47; and Public FA Letter, *supra* note 26.

[58] *See* WM Financial Strategies Letter/Ms. Howard, *supra* note 29.

[59] *See* NAIPFA Letter, *supra* note 6.

[60] *See* Fiscal Advisors Letter, *supra* note 26 and Munistat Letter, *supra* note 6.

[61] *See* Columbia Capital Letter, *supra* note 15.

[62] *See* GFOA Letter, *supra* note 7.

[63] *See* Specialized Public Finance Letter, *supra* note 6.

[64] *See* Columbia Capital Letter, *supra* note 15; Lewis Young Letter, *supra* note 10; NAIPFA Letter, *supra* note 6; Public FA Letter, *supra* note 26; and Springsted Letter, *supra* note 6.

[65] *See* IBIC Letter, *supra* note 6.

[66] *See* GFOA Letter, *supra* note 7; IBIC Letter, *supra* note 6; and PFM Letter, *supra* note 47.

many issuers."[67] Another stated, "Small issuers, issuing difficult to place securities need all the options they can get."[68] Another commenter stated, "Very often, only the local dealer is interested in marketing the securities of these municipal issuers and these transactions are usually too small to attract bids from larger firms" and argued that any revisions to the rule should retain the ability of dealer financial advisors to conduct direct placements on behalf of smaller issuers.[69] Another noted that small and infrequent borrowers in the municipal bond market face difficulties getting bids for their bonds even when deal flow is low.[70]

Other commenters against the proposed amendments to Rule G–23 raised specific State law requirements and said that certain special districts would be negatively affected by the proposed amendments.[71] Specifically, some commenters noted that municipal utility districts ("MUDs") in Texas sell their bonds "non-rated" and said that the proposed amendments would increase interest rates and property taxes.[72] One commenter also argued, "Eliminating financial advisers from bidding on their own districts would force our firm to seek a legislative remedy and allow our districts to sell bonds by negotiated sale and therefore all but eliminating competitive sales in the future."[73]

Some of the commenters against the proposed amendments also suggested exemptions for issuances below a certain threshold if the proposed amendments that would prohibit dealer financial advisors from serving as underwriters on transactions on which they provided financial advisory services were adopted.[74] The proposed threshold exemptions ranged from $5 million to $30 million or less. One trade association provided statistics to indicate that "only 2.5% of all new issue volume (based on the total dollar amount) for the last ten years" exceeded $10,000,000, which suggest that there should be an exception for smaller issuances as they are a small part of the market.[75]

MSRB Response. The MSRB believes that the potential negative impact on fees and market accessibility for small and/or infrequent issuers would be minimal compared to the protections that will be afforded to such issuers. The MSRB is persuaded by the arguments that small and/or infrequent issuers are, in many cases, unable to appreciate the nature of the conflict they are being asked to waive by the very dealer financial advisor that will benefit from the waiver.[76] The MSRB does not believe that exceptions should be provided for smaller offerings as suggested by several commenters.

Competitive Bid Offerings and Failed Bids

Some commenters did not support exceptions to the prohibition that would allow a dealer financial advisor to bid on a competitive transaction for which they have provided financial advisory services. One of these commenters noted "a financial advisor may also control or influence the credit enhancement and ratings process. Whether to apply for insurance and/or a rating, which ratings service to use and structural considerations like reserve or coverage requirements can all impact the outcome of a competitive sale."[77] Another argued that if a financial advisor were permitted to bid for a competitive transaction, it might not aggressively work to secure the largest number of bids possible because of an incentive to reduce competition.[78] One commenter noted that any time a financial advisor provides the winning bid on a competitive sale transaction the potential for an appearance of impropriety exists.[79]

Commenters also suggested that, even if a notice of the sale were made available an ample time before the competitive bid, the notice would not change the inherent conflict of interest that exists when a dealer is allowed to participate in such a transaction. One of these commenters stated that the notice of sale is already published at least five business days before a competitive sale, so providing such an exception would not provide meaningful relief or mitigate any conflicts of interest.[80] Another commenter suggested that allowing an exception for competitively bid issues for which the notice of the sale was provided five to seven business days in advance of the bid deadline to allow time for due diligence "will invite game playing."[81]

Other commenters noted that failed bids are not a common occurrence and there should be no exceptions for such occurrences.[82] One noted that most failed bids are due to "severe market disruptions, transactions not suited to competitive bid or poorly designed bidding rules." In the event of a failed

[67] *See* D.A. Davidson Letter, *supra* note 16.

[68] *See* Zions First National Bank, Letter from W. David Hemingway, Executive Vice President dated September 30, 2010 ("Zions Letter").

[69] *See* BDA Letter, *supra* note 16.

[70] *See* BDA Letter, *supra* note 16; D.A. Davidson Letter, *supra* note 16; Hilliard Letter, *supra* note 16; and Zions Letter, *supra* note 78.

[71] *See* Alabama Department of Education, Letter from Warren Craig Pouncey, Deputy State Superintendent of Education, Administrative and Financial Services dated September 29, 2010 ("Alabama Letter"); Allen Boone Humphries Robinson LLP, Letter from Joe B. Allen, Managing Partner dated September 29, 2010 ("Allen Letter"); Corinthian Communities, Letter from Harry Masterson, Principal dated September 30, 2010 ("Corinthian Letter"); Crews & Associates, Inc., Letter from Jim Jones, President dated September 28, 2010 ("Crews Letter"); FirstSouthwest, Letter from Terrell Palmer, Senior Vice President dated September 29, 2010 ("FirstSouthwest/Mr. Palmer Letter"); Fulbright Letter, *supra* note 19; GGP–Bridgeland, LP, Letter from Peter C. Houghton, Vice President dated September 29, 2010 ("GGP–Bridgeland Letter"); Mischer Investments, Letter from Mark A. Kilkenny, Senior Vice President dated September 29, 2010 ("Mischer Letter"); Newland Real Estate Group, LLC, Letter from Walter F. Nelson, President dated September 30, 2010 ("Newland Letter"); New Quest Properties, Letter from Steven D. Alvis, Managing Partner dated September 29, 2010 ("NewQuest Letter"); Schwartz, Page & Harding, L.L.P., Letter from Joseph M. Schwartz, Managing Partner dated September 29, 2010 ("Schwartz Letter"); Signorelli Company, Letter from Daniel K. Signorelli, President ("Signorelli Letter"); Wolff Companies, Letter from David W. Hightower, Executive Vice President and Chief Development Officer dated September 30, 2010 ("Wolff Letter"); and Young & Brooks, Letter from Mark W. Brooks dated September 29, 2010 ("Young & Brooks Letter").

[72] *See also* FirstSouthwest/Mr. Palmer Letter, *supra* note 71; FirstSouthwest, Letter from Julie Peak, Managing Director, dated September 27, 2010 ("FirstSouthwest/Ms. Peak Letter"); Municipal Information Services, Letter from Ronald L. Welch dated September 30, 2010 ("MIS Letter"); and Young and Brooks Letter, *supra* 70.

[73] *See* FirstSouthwest/Mr. Palmer Letter, *supra* note 71.

[74] *See* Baum Letter, *supra* note 16 ($30,000,000); D.A. Davidson Letter, *supra* note 16 ($30,000,000); FirstSouthwest, Letter from Hill A. Feinberg, Chairman and CEO dated September 23, 2010 ("FirstSouthwest/Mr. Feinberg Letter") (competitively bid issues not exceeding $5,000,000); Lantana (Texas) District Offices, Denton County Fresh Water Supply Districts 6 & 7, Letter from Kevin Mercer, General Manager dated September 28, 2010 ("Lantana Letter") (competitively bid issues not exceeding $10,000,000); NewQuest Letter, *supra* note 71 (competitively bid issues not exceeding $10,000,000); RBC Letter, *supra* note 17 ($20,000,000); and Signorelli Letter, *supra* note 71 (competitively bid issues not exceeding $10 million).

[75] *See* SIFMA Letter, *supra* note 17.

[76] *See* Copperas Cove Letter, *supra* note 12; Fieldman Letter, *supra* note 26; Georgetown, Texas Letter, *supra* note 12; and Portland Letter, *supra* note 6.

[77] *See* Specialized Public Finance Letter, *supra* note 6.

[78] *See* WM Financial Strategies/Ms. Howard Letter, *supra* note 29.

[79] *See* Columbia Capital Letter, *supra* note 15; Specialized Public Finance Letter, *supra* note 6; and WM Financial Strategies/Ms. Howard Letter, *supra* note 29; *see also* Fieldman Letter, *supra* note 26; Fiscal Advisors Letter, *supra* note 26; Munistat Letter, *supra* note 6; Public FA Letter, *supra* note 26.

[80] *See* Columbia Capital Letter, *supra* note 15; IBIC Letter, *supra* note 6; Fiscal Advisors Letter, *supra* note 26; Specialized Public Finance Letter, *supra* note 6; and Tamalpais Letter, *supra* note 45.

[81] *See* Springsted Letter, *supra* note 6.

[82] *See* Columbia Capital Letter, *supra* note 15; IBIC Letter, *supra* note 6; Lewis Young Letter, *supra* note 10; and WM Financial Strategies/Ms. Howard, *supra* note 30.

bid, another commenter stated, "there is almost always means of getting the securities sold without the advisor stepping in as a buyer." They also argued that in the case of private placements there is much more potential for abuse and a flat prohibition would be helpful. However, one commenter provided an example of a transaction that had not been completed as of the date of her letter and noted that the firm "was unsuccessful in underwriting the securities and then switched to serving as financial advisor for a competitive sale." [83]

A trade association for non-dealer financial advisors noted that "if a bid fails it is most likely because the broker-dealer financial advisor failed to properly advertise, circulate documents and/or perform other activities to obtain the largest number of bids possible. If a financial advisor has performed their role properly and yet there are no bidders, it is likely that the credit of the issuer's debt obligation should not be publicly sold." [84] In addition, the organization argued that in the event of the remote possibility under which competitive bidding is required by local/State law and the possibility of only one interested underwriter, the issuer would be better served by employing a non-dealer municipal advisor to arrange the competitive sale rather than relying on the potential "sole bidder" to serve as both financial advisor and sole bidder. It also argued that the non-dealer municipal advisor may recommend that the bid be rejected which could provide other legal options for the debt placement and that "sole bidders" have the opportunity to charge higher fees and impose higher yields.

However, commenters against the proposed amendments stated that they are unaware of: (i) Many circumstances under which a dealer financial advisor would be justified in resigning in order to bid on a competitive issuance transaction as underwriter; (ii) situations under which the financial advisor is not involved in the bidding process; or (iii) situations under which the issuer handles the bid process.[85] One commenter noted that issuers do not usually have the knowledge to properly handle the bid process internally. Another stated that allowing a financial advisor to resign to bid on a competitive transaction is "another illustration of allowing a loophole for the dealer that introduces a conflict of interest." One commenter argued, "The electronic bidding platforms are nothing more than vehicles to collect the bids" and that "it is an uncommon practice for the bid process to be handled internally by the issuer." Commenters also agreed that, in competitively bid transactions, the issuer should not have to hire a financial advisor to oversee the bid process in order to allow the original advisor to bid on the transaction. Finally, one of the commenters argued, "If the FA maintains its role throughout the transaction, there would be no need for a second FA." [86]

Some commenters stated that the proposed amendments to Rule G–23 are unnecessary because the competitive bid process is appropriate, fair and equal for all parties.[87] One commenter noted, "awards of deals in the competitive market are based solely on price and have nothing to do with any previous or existing relationships among issuers, advisors and dealers." [88] Another stated, "The bidding process for competitive sales encourages competition among the underwriters and introduces an arms' length basis for establishing the terms of the issue and the underwriting." [89] One bank argued that "at least direct purchases by financial advisors for their own portfolios should be allowed in competitively bid transactions where the issuer acknowledges the potential conflicts in writing and gives the financial advisor permission to submit a bid." [90]

Eleven commenters [91] in Kentucky and South Carolina submitted form letters opposing any changes to the rule. Some of these commenters noted that, for certain competitive bid issuances, a dealer financial advisor provided the only winning bid. "No other underwriting firm had bid to purchase these bonds and the Sale would have been unsuccessful" without the dealer financial advisor's participation. Other commenters noted that for certain of their competitive bid transactions, the winning bid provided by the dealer financial advisor was at a cost significantly lower than the next closest bid.

Some commenters stated that the negative impact of a failed bid in a competitive bid transaction can be prevented by allowing the financial advisor to bid on the transaction.[92] One commenter cited the "dramatic effect failed bids" had on the marketplace in the last few years and suggested that an exception to the prohibition for competitive bid transactions would avoid, "exacerbating the risk of failed bids that might otherwise occur." And further suggested that a financial advisor "* * * should not conduct an auction in a competitively bid transaction and participate as a bidding underwriter on the same issue." [93] One commenter stated that it has not had a failed bid transaction [94] and others stated that they have seen transactions in which no bid was placed or the dealer provided the only bid.[95] Another commenter argued that when a failed bid occurs "it is either a function of very unusual and difficult market conditions or an issue that likely should have been sold on a negotiated basis to begin with (perhaps the issue was required to be sold competitively as required by state law)." While another stated, "When we are hired as municipal advisor we pledge to the issuer that, if permitted, we will submit a bid for their bonds,"

[83] *See* WM Financial Strategies/Ms. Howard Letter, *supra* note 29.

[84] *See* NAIPFA Letter, *supra* note 6.

[85] *See* Columbia Capital Letter, *supra* note 15; IBIC Letter, *supra* note 6; Munistat Letter, *supra* note 6; Springsted Letter, *supra* note 6; and Tamalpais Letter, *supra* note 45.

[86] *See* Fiscal Advisors Letter, *supra* note 26; IBIC Letter, *supra* note 6; Lewis Young Letter, *supra* note 10; Munistat Letter, *supra* note 6; Public FA Letter, *supra* note 26; Springsted Letter, *supra* note 6; and Tamalpais Letter, *supra* note 45.

[87] *See* D.A. Davidson Letter, *supra* note 16; Eastern Bank Letter, *supra* note 19; and Hilliard Letter, *supra* note 16.

[88] *See* SIFMA Letter, *supra* note 17.

[89] *See* BDA Letter, *supra* note 16.

[90] *See* Zions Letter, *supra* note 78.

[91] *See* Barren County (Kentucky) Schools, Letter from Dr. Jerry Ralston, Superintendent dated September 15, 2010 ("Barren County Letter"); Boyd County (Kentucky) Public Schools, Letter from Donald Fleu, Finance Director/Treasurer dated September 15, 2010 ("Boyd County Letter"); Crittenden County (Kentucky) Schools, Letter from Brent Highfil, Finance Director dated September 15, 2010 ("Crittenden County Letter"); Dayton (Kentucky) Independent Schools, Letter from Gary Rye, Superintendent dated September 14, 2010 ("Dayton, Kentucky Letter"); East Bernstadt (Kentucky) Independent School, Letter from Homer Radford, Superintendent dated September 15, 2010 ("East Bernstadt Letter"); Elliott County (Kentucky) Board of Education, Letter from John Williams, Superintendent dated September 15, 2010 ("Elliott County Letter"); Greenup County (Kentucky) Schools, Letter from Scott P. Burchett, Finance Director/Treasurer dated September 17, 2010 ("Greenup County Letter"); Kenton County (Kentucky) Board of Education, Letter from Kelley Gamble, Finance Director dated September 15, 2010 ("Kenton County Letter"); Kentucky Interlocal School Transportation Association, Letter from Jack Moreland, President dated September 27, 2010 ("KISTA Letter"); Pike County (Kentucky) Schools, Letter from Nancy Ratliff, Finance Director dated September 15, 2010 ("Pike County Letter"); and South Carolina Association of Governmental Organizations, Letter from Brantley D. Thomas III, Chairman of the Board of Directors dated September 15, 2010 ("SCAGO Letter"). The letters were an exhibit to the RSA Letter, *supra* note 49.

[92] *See* BDA Letter, *supra* note 16 and Eastern Bank Letter, *supra* note 19.

[93] *See* SIFMA Letter, *supra* note 17.

[94] *See* RSA Letter, *supra* note 49.

[95] *See* DeWaay Financial Network, Letter from Mark Detter, Vice President dated September 24, 2010 ("DeWaay Letter") and Stone & Youngberg Letter, *supra* note 49 (on a non-rated transaction in a state where competitive bidding is compulsory).

which guarantees that a failed bid will not occur.[96]

Some commenters noted that existing market practice makes a notice of the competitive bid available five to seven days prior to the sale and that such notice would be a good rule of practice to allow bidders to review information, meet any internal processes and conduct any due diligence that they require.[97] One commenter also noted that five days advance notice is adequate and is "about the time of forward focus for underwriters. Anything longer will not be beneficial."[98] Other commenters stated that a five to ten day notice requirement would be helpful with competitive bid transactions.[99]

Commenters did not recognize situations in which the financial advisor would have to resign in order to submit a bid to underwrite a competitive bid transaction, especially because of the wide use of the electronic bidding process.[100] One of the commenters noted, "Nearly all competitive sales in our markets utilize a third party electronic platform to receive the bids," which precludes a financial advisor from manipulating the results and provides assistance with eliminating concerns regarding such practice. Another stated, "As financial advisor we facilitate the setting up of the bid process but the access" is handled by the issuer. One of the commenters requested that the MSRB consider modifications to the proposed amendments that would allow a financial advisory firm to bid on a competitive bond issuance through an "* * * independent electronic bidding system (*e.g.,* PARITY) in which the financial advisory firm does not have access to bid information."[101]

One commenter stated, "there are some situations where a financial advisor does not conduct the bid process for an issuer, but this is typically in the case of very large and very sophisticated issuers. In most cases issuers are ill-equipped to manage the bidding process, and would be negatively impacted if they attempted to do so."[102] Another commenter stated, in general, as financial advisor they do not conduct the bid process but they would assist the issuer in evaluating bids that issuers receive in a sealed bid process and suggested that it would be good practice to require that any dealer financial advisor that is bidding on a competitive sale for an issuer be required to submit its bid electronically through a third party independent platform.[103] Another noted, "Electronic bidding platforms are a viable option if those services are readily available to an issuer at a cost that is not prohibitive."[104]

Finally, other commenters argued that any proposed changes to Rule G–23 should apply to negotiated sales only and not to competitive sales and that the financial advisor should not be permitted to serve as underwriter on a negotiated transaction unless "the issuer is afforded the opportunity to hire an independent financial advisor to monitor the FA's structuring and the underwriter's pricing of the negotiated issue." Another argued that they could cite many examples in which the flexibility of a negotiated refunding has allowed issuers to generate savings that would have been missed or reduced by selling at competitive sale.[105]

MSRB Response. The MSRB does not believe that the use of electronic bidding platforms mitigates the conflict of interest posed by a dealer financial advisor's switching to an underwriter role, in part, because such platforms are not necessarily available to all issuers. Further, the MSRB does not believe that requiring additional advance notice of a competitive sale would provide adequate protections against conflicts of interest. As stated by a non-dealer financial advisor, "a financial advisor may also control or influence the credit enhancement and ratings process. Whether to apply for insurance and/or a rating, which ratings service to use and structural considerations like reserve or coverage requirements can all impact the outcome of a competitive sale."[106] The MSRB believes that involvement in this process provides a dealer financial advisor with information that can provide an unfair advantage when such dealer participates in a competitive bid transaction.

Effective Date/Transitional Rule

Some commenters noted that immediate implementation of the proposed amendments to prohibit a dealer financial advisor from serving as underwriter on an issue would cause disorder in the market because of existing contractual relationships. Commenters suggested various transitional time frames to allow market participants adequate time to comply with any changes.[107] One commenter suggested that "the MSRB delay its effective date or continue to apply current Rule G–23 to those financial advisory relationships that are in place at the time the modified Rule is enacted."[108]Another requested that "the MSRB include a transitional rule and time period to allow issuers, dealers and financial advisors time to review their current engagements and business practices and to take action to conform to, and comply with, any new rules."[109]

MSRB Response. The MSRB has requested that the proposed rule change be made effective for new issues for which the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)) occurs more than six months after SEC approval to allow issuers of municipal securities time to finalize any outstanding transactions that might be affected by the proposed rule change.

Miscellaneous

Conduit Issues. One dealer financial advisor provided an example of services that it provides to its hospital clients. The commenter noted that such clients often pursue multiple Federal credit enhancement programs and must engage a financial advisor to assist and support them as they proceed through certain Federal processes. If at some point during the process, a client determines to pursue one Federal program over another, this commenter states that "the dealer engaged as financial advisor would be unable to serve as the client's underwriter." The commenter also suggests this is detrimental to the client because of "unnecessary project delays" and may lead the client to "select an underwriter inexperienced in structuring and issuing" certain types of financing structures.[110]

Another commenter requested a specific exemption for "corporate (not

[96] *See* Piper Letter, *supra* note 17 and Hilliard Letter, *supra* note 16.

[97] *See* D.A. Davidson Letter, *supra* note 16; Eastern Bank Letter, *supra* note 19; Piper Letter, *supra* note 17; and Stone & Youngberg Letter, *supra* note 49.

[98] *See* Hilliard Letter, *supra* note 16.

[99] *See* BDA Letter, *supra* note 16; Hilliard Letter, *supra* note 16; Piper Letter, *supra* note 17; SIFMA Letter, *supra* note 17; Smith, Murdaugh, Little & Bonham, L.L.P., Letter from W. James Murdaugh, Jr. dated September 29, 2010 ("Smith Letter"); Young & Brooks Letter, *supra* note 71; and Zions Letter, *supra* note 78.

[100] *See* D.A. Davidson Letter, *supra* note 16; Eastern Bank Letter, *supra* note 19; Hilliard Letter, *supra* note 16; Piper Letter, *supra* note 17; Stone & Youngberg Letter, *supra* note 49 and Zions Letter, *supra* note 78.

[101] *See* Allen Letter, *supra* note 71.

[102] *See* RSA Letter, *supra* note 49.

[103] *See* Piper Letter, *supra* note 17.

[104] *See* DeWaay Letter, *supra* note 105.

[105] *See* BDA Letter, *supra* note 16; MIS Letter, *supra* note 72; and Piper Letter, *supra* note 17.

[106] *See* Specialized Public Finance Letter, *supra* note 6.

[107] *See* BDA Letter, *supra* note 16; Baum Letter, *supra* note 16; and SIFMA Letter, *supra* note 17.

[108] *See* RBC Letter, *supra* note 17.

[109] *See* BDA Letter, *supra* note 16.

[110] *See* Red Capital Markets, LLC, Letter from Kevin J. Mainelli, Managing Director dated September 30, 2010 ("Red Capital Letter").

for profit and for profit) conduit borrowers" because of their expectation, "to be treated in the same manner as they are treated in the corporate advisory and underwriting context." [111]

MSRB Response. Rule G–23 does not preclude a dealer from serving as financial advisor to a conduit borrower on an issuance of municipal securities and the proposed amendments would not prohibit the dealer from providing underwriting services for such issue of the conduit issuer so long as it has not also become the financial advisor to the conduit issuer.

Principal Transactions by Financial Advisors. One commenter noted that an important issue to be considered is that financial advisors "should not be allowed to serve as a principal in any municipal transaction which includes a swap counter party, GIC provider or the reinvestment of proceeds." [112]

MSRB Response. The MSRB will take this comment under advisement when it considers the fiduciary duty of municipal advisors, as mandated by Dodd-Frank.

Bank Loans. One commenter noted that any amendments to the rule should prohibit the activities of financial advisors, dealer banks and affiliated bank portfolios from doing indirectly what they are prohibited from doing directly. Another noted that the MSRB should not adopt any amendments that will prevent a national bank that provides financial advisory services to municipalities from purchasing municipal securities from its municipal clients.[113]

MSRB Response. The MSRB notes that a bank's purchase of an issuer client's municipal securities is covered by Rule G–23. However, the proposed amendments would not preclude true loans that are not municipal securities under the Act made by banks to municipal issuers.

Competitiveness. One commenter argued, "It has been difficult for a broker dealer to compete when a non regulated competitor is able to buy business rather than earn it. But now proposed amendments to G–23 seem to be a trade off, further placing broker dealers in a non competitive situation." Another stated that the proposed amendments are anti-competitive and potentially harmful to municipalities on their new issues. Finally, another argued, "To adopt a rule change that narrows the free choice of state and local governments, even if with the intent to protect their interest, would appear to be inconsistent with fundamental principles of federalism." [114]

MSRB Response. Rule G–23 was adopted as part of the MSRB's "fair practice" rules [115] with the intent to establish standards of ethical conduct for dealer financial advisors. The Board has long noted that a dealer financial advisor acts in a "fiduciary capacity" as agent for a governmental unit. The role and interests of the dealer financial advisor are "significantly different" from the role and interests of a dealer acting as an underwriter for the same governmental unit. Often, when a dealer financial advisor switches roles to underwrite a transaction, the issuer does not fully understand the implications of the ending of the financial advisory relationship with the issuer (which ends the dealer's fiduciary obligation to the issuer) and the arm's length relationship that is necessary due to the dealer financial advisor's becoming the underwriter on the transaction. Further, under Dodd-Frank, the Board will be considering the adoption of fair practice rules applicable to non-dealer financial advisors and other municipal advisors, thereby promoting a more equalized regulatory burden on both dealers and municipal advisors. On balance, dealer financial advisors will not be placed at a competitive disadvantage with non-dealer financial advisors as a result of the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2011–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2011–03. This file number should be included on the subject line if e-mail 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 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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–MSRB–2011–03 and should be submitted on or before March 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[116]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4391 Filed 2–25–11; 8:45 am]

BILLING CODE 8011–01–P

[111] *See* SIFMA Letter, *supra* note 17; *see also* BMO Letter, *supra* note 19.

[112] *See* FirstSouthwest/Mr. Feinberg Letter, *supra* note 74.

[113] *See* Baum Letter, *supra* note 16 and Zions Letter, *supra* note 78.

[114] *See* Baird Letter, *supra* note 17; Fulbright Letter, *supra* note 19; and Hilliard Letter, *supra* note 16.

[115] *See* Exchange Act Rel. No. 13987 (September 22, 1977).

[116] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7350]

Culturally Significant Object Imported for Exhibition Determinations: "Bust of a Ptolemaic Queen"

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, I hereby determine that the object to be included in the exhibition "Bust of a Ptolemaic Queen," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about March 15, 2011, until on or about March 15, 2014, 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 description of the exhibit object, 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: February 22, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4403 Filed 2–25–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7349]

Culturally Significant Objects Imported for Exhibition Determinations: "Gabriel Metsu, 1629–1667"

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, I hereby determine that the objects to be included in the exhibition "Gabriel Metsu, 1629–1667," 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 National Gallery of Art, Washington, DC, from on or about April 17, 2011, until on or about July 24, 2011, 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 exhibit 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: February 18, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4405 Filed 2–25–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7348]

Culturally Significant Objects Imported for Exhibition Determinations: "Richard Serra Drawing: A Retrospective"

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, I hereby determine that the objects to be included in the exhibition "Richard Serra Drawing: A Retrospective," 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 Metropolitan Museum of Art, New York, NY, from on or about April 11, 2011, until on or about August 28, 2011; the San Francisco Museum of Modern Art, San Francisco, CA, from October 15, 2011, until January 17, 2012; The Menil Collection, Houston, TX, from on or about March 1, 2012, until on or about June 10, 2012, 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 exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 22, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4406 Filed 2–25–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending January 29, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: DOT–OST–2011–0013.

Date Filed: January 25, 2011.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 657TC3 Special Passenger Amending Resolution 010j Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR) (Memo 1413). *Intended effective date:* 21 January 2011.

Docket Number: DOT–OST–2011–0014.

Date Filed: January 25, 2011.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 658TC3 Special Passenger Amending Resolution 010k Special Passenger Amending Resolution

between Brunei Darussalam and Malaysia (Memo 1414). *Intended effective date:* 1 February 2011.

Docket Number: DOT–OST–2011–0015.

Date Filed: January 24, 2011.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 632—Flex Fares ResolutionsTC1 Caribbean, Longhaul, Within South America-Tariffs, 8–17 March 2010 (Memo 0395). r1 041ee. *Intended effective date:* for travel on/after 1 July 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–3974 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Release of Federally Obligated Property at Gwinnett County Airport, Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Gwinnett County Airports Authority to waive the requirement that a 0.46-acre parcel of Federally obligated property, located at the Gwinnett County Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before March 30, 2011.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Lisa Favors, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Matthew L. Smith, Airport Director at the following address: 600 Briscoe Boulevard, Lawrenceville, GA 30046–4680.

FOR FURTHER INFORMATION CONTACT: Lisa Favors, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Bldg., Suite 2–260, College Park, GA 30337, (404) 305–7145. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Gwinnett County Airport Authority to release 0.46 acres of Federally obligated property at the Gwinnett County Airport. The property will be released for purchase of compatible, industrial development. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Gwinnett County Airport Authority.

Issued in Atlanta, Georgia, on February 15, 2011.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2011–4225 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance Holmes County Airport, Millersburg, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of the sale of vacant land, containing trees, brush, wetland, and streams owned by the Holmes County Airport Authority. Parcel #8A is approximately 14.000 acres. The land was acquired under grant 3–39–0056–0607. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land for release is vacant, not required for future development, safety, or compatible land use. The intended land use is to remain vacant. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before March 30, 2011.

FOR FURTHER INFORMATION CONTACT: Alex Erskine, Program Manager, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. *Telephone Number:* (734) 229–2927/*FAX Number:* (734) 229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Holmes County Airport, Millersburg, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Hardy Township, County of Holmes, State of Ohio, and described as follows:

(Legal Description of Property).

Being a part of Lot 17 of the Third Quarter, Hardy Township, T–9 N, R–7 W, Holmes County, Ohio, also known as part of the lands conveyed to Holmes County Regional Airport Authority in Deed vol. 236 page 228.

Described as follows:

Commencing at a 5/8 inch rebar found marking the southeast corner of said Lot 17, thence N 03 degrees 03′25″ E 527.97 feet along the lot line to a 5/8 inch rebar found the TRUE POINT OF BEGINNING, thence with the following FOUR (4) COURSES:

(1) N 88 degrees 01′04″ W 2648.97 feet along Thomas K. Bird, Trustee (O.R. vol. 66 page 22) and Cheryl L. Bird, Trustee (O.R. vol. 66 page 43) and Wilmer A. and Sharon R. Coblentz (O.R. vol. 16 page 689 and O.R. vol. 76 page 464) and Edward A. and Teresa L. Braun (O.R. vol. 76 page 466) and Teresa L. Braun (O.R. vol. 76 page 468) and Barry and Deborah J. Walton's (O.R. vol. 76 page 462) north line to a 5 inch rebar found on the lot line;

(2) N 01 degrees 57′43″ E 230.03 feet along the lot line to an iron pin set;

(3) S 88 degrees 01′04′ E 2653.37 feet through the lands of said Holmes County Regional Airport Authority to an iron pin set on the lot line;

(4) S 03 degrees 03′251 W 230.07 feet along the lot line to the TRUE POINT OF BEGINNING.

This parcel contains 14.000 acres, but subject to all easements of record.

Note to go to adjoiner only.

Bearings from Geodetic North.

According to a survey made and description prepared by Donald C. Baker, P.S. 6938, December 17, 2010.

Issued in Romulus, Michigan, on January 21, 2011.

John L. Mayfield Jr.,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2011–4224 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind a Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for improvements that were proposed for Forest Road 56 in King County, Washington northeast of the city of North Bend. The NOI was published in the **Federal Register** on April 27, 2001. This rescission is based on a reduction in the scope of the project.

FOR FURTHER INFORMATION CONTACT: Michael Traffalis, Project Manager, FHWA, Western Federal Lands Highway Division, 610 East Fifth Street, Vancouver, Washington 98611, *Telephone:* (360) 619–7700.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the United States Forest Service and King County, is rescinding the NOI to prepare an EIS for a project that had been proposed to improve Forest Road 56, Middle Fork Snoqualmie River Road, in King County, Washington. The NOI is being rescinded because the scope of the project has been reduced from the 2001 proposal to examine new alignments and wider road widths up to 32 feet. Due to potential environmental impacts associated with new alignments and wider widths, as well as funding constraints, the currently proposed project would reconstruct the road and associated features along its current alignment to a consistent width of 20 feet. The currently proposed project extends approximately 9.7 miles from milepost 2.7, just past the couplet portion of the route, to the Middle Fork Campground at approximately milepost 12.4, within the Mt. Baker-Snoqualmie National Forest.

Given the reduction in scope and the associated potential impacts of the proposed action, FHWA intends to prepare an Environmental Assessment to determine if the project has the potential to significantly affect the quality of the human environment.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: February 17, 2011.

Clara H. Conner,

Division Engineer, Western Federal Lands Highway Division, FHWA.

[FR Doc. 2011–4303 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Sunrise Project, I–205 to Rock Creek Junction: Clackamas County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, Sunrise Project, I–205 to Rock Creek Junction, Clackamas County, Oregon. This action grants approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 27, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301, Telephone: (503) 587–4716. The Sunrise Project, I–205 to Rock Creek Junction Final Environmental Impact Statement, Record of Decision and other project records are available upon written request from the Federal Highway Administration at the address shown above. Comments or questions concerning the Sunrise Project, I–205 to Rock Creek Junction should be directed to the FHWA at the address provided above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139(*l*)(1) by issuing a Record of Decision for the following highway project in the State of Oregon: Sunrise Project, I–205 to Rock Creek Junction on February 22, 2011. The project will be part of the State highway network, as defined in the Oregon Highway Plan, connecting I–205, the Milwaukie Expressway and OR 212/224. The highway, on new alignment, will provide six through lanes plus two auxiliary lanes. The Sunrise Project will become the designated OR 212/224, with the existing OR212/224 becoming a county arterial. The actions by the Federal agencies and the laws under which such actions were taken are described in the Record of Decision issued on February 22, 2011; the Final Environmental Impact Statement issued on December 23, 2010, and in other documents in the FHWA project records. The Record of Decision, Final Environmental Impact Statement and other project records are available by contacting the FHWA at the address provided above. The Record of Decision and Final Environmental Impact Statement can be viewed and downloaded from the project Web site at: *http://www.sunrise-project.org.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4347]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 1536 and 49 U.S.C. 303].

4. *Wildlife:* Section 7 of the Endangered Species Act [16 U.S.C. 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f].

6. *Social and Economic:* Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000(d) *et seq.*]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898,

Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 22, 2011.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. 2011–4328 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0001–N–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

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

ACTION: 30-Day notice of submission of information collection for approval by the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, FRA has submitted a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be submitted on or before March 30, 2011.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Ms. Kimberly Toone, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6132) or Mr. Robert Brogan, Office of Safety Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

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, FRA means 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.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, content and accuracy of information, usefulness of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

FRA will only submit a collection of information for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both respondents and the Federal Government;
- The collections of information are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used only internally for general management purposes and is not intended for release outside of the agency (if released, the agency must indicate the qualitative nature of the information);
- Information gathered will not be used for purposes of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

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.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

On December 22, 2010, OMB—on behalf of DOT/FRA and other listed Executive Agencies—published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. 75 FR 80542. DOT/FRA received no comments in response to this notice.

The summary below describes the nature of the information collection requirements (ICRs) and the expected projected burden estimates over the next three years [1] for the ICR being submitted for clearance by OMB as required by the PRA.

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 6.

Respondents: 6,300.

Annual responses: 2,100.

Frequency of Response: Once per request.

Average minutes per response: 10 minutes.

Burden hours: 1,062 hours.

Comments are invited on the following: 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.

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.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on February 22, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–4331 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

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

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on February 18, 2011.

Donald Burger,

Chief, Special Permits and Approvals Branch.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
14167–M	Trinityrail, Dallas, TX	4	03–31–2011
6293–M	ATK Space Systems, Inc., (Former Grantee: ATK Thiokol, Inc.), Corine, UT.	4	03–31–2011
14741–M	Weatherford International, Fort Worth, TX	4	03–31–2011
14650–M	Air Transport International, L.L.C., Little Rock, AR	4	03–31–2011
14926–M	Lynden Air Cargo, Anchorage, AK	4	11–30–2010
8826–M	Phoenix Air Group, Inc., Cartersville, GA	4	03–31–2011
10869–M	Norris Cylinder Company, Longview, TX	4	03–31–2011
10049–M	Martin Transport, Inc., Kilgore, TX	4	01–31–2011
8815–M	Florex Explosives, Inc., Crystal River, FL	4	01–31–2011
14447–M	SNF Holding Company, Riceboro, GA	4	01–31–2011
12561–M	Rhodia, Inc., Cranbury, NJ	4	01–31–2011
14617–M	Western International Gas & Cylinders, Inc., Bellville, TX	4	01–31–2011
3121–M	Department of Defense, Scott Air Force Base, IL	4	02–15–2011
14763–M	Weatherford International, Forth Worth, TX	4	02–15–2011
14909–M	Lake Clark Air, Inc., Port Alsworth, AK	4	03–31–2011
14926–M	Lynden Air Cargo, Anchorage, AK	4	03–31–2011
14860–M	Alaska Airlines, Seattle, WA	4	01–31–2011
10656–M	The Conference of Radiation Control Program Directors, Inc., Frankfort, KY.	4	04–30–2011

[1] The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance Federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11406–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY.	4	04–30–2011
14854–M	Airgas, Inc., Radnor, PA	4	03–31–2011
12629–M	TEA Technologies, Inc., Amarillo, TX	4	04–30–2011
10922–M	FIBA Technologies, Inc., Millbury, MA	4	12–31–2010
13736–M	ConocoPhillips, Anchorage, AK	4	03–31–2011
14810–N	Olin Corporation, Chlor Alkai Products Division, Cleveland, TN	4	03–31–2011
14813–N	Organ Recovery Systems, Des Plaines, IL	4	03–31–2011
14835–N	The Reusable Industrial Packaging Assoc., Washington, DC	4	03–31–2011
14839–N	Matheson Tri-Gas, Inc., Basking Ridge, NJ	3	11–30–2010
14868–N	Wal-Mart Stores, Inc., Bentonville, AR	4	03–31–2011
14878–N	Humboldt County Waste Management Authority, Eureka, CA	4	03–31–2011
14872–N	Arkema, Inc., Philadelphia, PA	4	03–31–2011
14929–N	Alaska Island Air, Inc., Togiak, AK	4	11–30–2010
14945–N	Vulcan Construction Materials LP SE d/b/a Vulcan Materials Company, Atlanta, GA.	4	03–31–2011
14951–N	Lincoln Composites, Lincoln, NE	1	11–30–2010
14960–N	Cheltec, Inc., Sarasota, FL	4	03–31–2011
14965–N	JiangXi Oxygen Plant Co., Ltd., Jiangxi Province	4	11–30–2010
14972–N	Air Products and Chemicals, Allentown, PA	4	11–30–2010
14992–N	VIP Transport, Inc., Corona, CA	4	02–28–2010
14989–N	Vinci-technologies	4	02–28–2011
15003–N	Gebauer Company, Cleveland, OH	4	02–28–2011
15028–N	Roeder Cartage Company, Lima, OH	4	02–28–2011
15031–N	Euro Asia Packaging (Guangdong) Co., Ltd., ZhongShan, Canton	4	02–28–2011
15036–N	UTLX Manufacturing, Incorporated, Alexandria, LA	4	02–28–2011
15053–N	Department of Defense, Scott Air Force Base, IL	4	07–15–2010
15080–N	Alaska Airlines, Seattle, WA	1	04–30–2011
15088–N	Burlington Containers, Brooklyn, NY	3	01–31–2011
15096–N	NK CO., LTD, Saha-Gu, Busan	4	01–31–2011
15125–N	Essex Cryogenics of Missouri, Inc., *** St. Louis, MO	4	01–31–2011
15126–N	Trans Aero Ltd., Cheyenne, WY	4	01–31–2011
15132–N	National Aeronautics and Space Administration (NASA), Washington, DC.	4	01–31–2011
15233–N	ExpressJet Airlines, Inc., Houston, TX	4	04–30–2011
15234–N	Atlantic Southeast Airlines, Inc., Atlanta, GA	4	04–30–2011
15237–N	US Airways, Phoenix, AZ	4	04–30–2011

[FR Doc. 2011–4214 Filed 2–25–11; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 7, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, April 7, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4307 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, April 26, 2011, at 2 p.m., Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4308 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 26, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Tuesday, April 26, 2011, at 9 a.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4309 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, April 12, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4311 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 27, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Practitioner Engagement Project Committee will be held Wednesday, April 27, 2011, at 9 a.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4312 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Wednesday, April 6, 2011, at 3:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4313 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, April 20, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4315 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 12, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4316 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 19, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, April 19, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227

or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4325 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, April 21, 2011, at 11:30 a.m., Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4324 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 6, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, April 6, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information, please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4323 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 21, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, April 21, 2011, at 2 p.m., Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4322 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 26, 2011 and Wednesday, April 27, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Tuesday, April 26, 2011, from 8 a.m. to 4:30 p.m. and Wednesday, April 27, 2011, from 8 a.m. to 12 p.m. Eastern Time in Plantation, FL. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Marianne Ayala. For more information and site location, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4321 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, April 12, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, April 12, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4320 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 28, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, April 28, 2011, at 2 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: February 18, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–4319 Filed 2–25–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

San Luis Trust Bank, FSB, San Luis Obispo, CA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for San Luis Trust Bank, FSB, San Luis Obispo, California, (OTS No. 15051) on February 18, 2011.

Dated: February 22, 2011.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2011–4306 Filed 2–25–11; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL REGISTER

Vol. 76 Monday,
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Part II

Securities and Exchange Commission

17 CFR Parts 240, 242, and 249
Registration and Regulation of Security-Based Swap Execution Facilities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 242, and 249

[Release No. 34–63825; File No. S7–06–11]

RIN 3235–AK93

Registration and Regulation of Security-Based Swap Execution Facilities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; proposed interpretation.

SUMMARY: In accordance with Section 763 ("Section 763") of Title VII ("Title VII") of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"), the Securities and Exchange Commission ("SEC" or "Commission") is proposing Regulation SB SEF under the Securities Exchange Act of 1934 ("Exchange Act") that is designed to create a registration framework for security-based swap execution facilities ("SB SEFs"); establish rules with respect to the Dodd-Frank Act's requirement that a SB SEF must comply with the fourteen enumerated core principles ("Core Principles") and enforce compliance with those principles; and implement a process for a SB SEF to submit to the Commission proposed changes to the SB SEF's rules. The Commission also is proposing an interpretation of the definition of "security-based swap execution facility" set forth in Section 3(a)(77) of the Exchange Act to provide guidance on the characteristics of those systems or platforms that would satisfy the statutory definition. In addition, the Commission is proposing to amend Rule 3a–1 under the Exchange Act to exempt a registered SB SEF from the Exchange Act's definition of "exchange" and to add Rule 15a–12 under the Exchange Act to exempt, subject to certain conditions, a registered SB SEF from regulation as a broker pursuant to Section 15(b) of the Exchange Act.

DATES: Comments should be submitted on or before April 4, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–11. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St., NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Nancy J. Burke-Sanow, Assistant Director, at (202) 551–5621; David Liu, Senior Special Counsel, at (312) 353–6265; Constance Kiggins, Special Counsel, (202) 551–5701; Molly Kim, Special Counsel, at (202) 551–5644; Leah Mesfin, Special Counsel, at (202) 551–5655; Susie Cho, Special Counsel, at (202) 551–5639; Michou Nguyen, Special Counsel, (202) 551–5634; Heidi Pilpel, Special Counsel, (202) 551–5666; Steven Varholik, Special Counsel, at (202) 551–5615; Sarah Schandler, Special Counsel, at (202) 551–7145; and Iliana Lundblad, Attorney, at (202) 551–5871; Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing new Regulation SB SEF under the Exchange Act governing the registration and regulation of SB SEFs, an interpretation with respect to the definition of a SB SEF and new Form SB SEF for applicants to register with the Commission as SB SEFs. The Commission also is proposing certain exemptions to facilitate the trading of security-based swaps ("SB swaps") on SB SEFs.

I. Introduction

On July 21, 2010, the President signed the Dodd-Frank Act into law.[1] The Dodd-Frank Act was enacted, among other things, to promote the financial stability of the United States by improving accountability and transparency of the nation's financial system.[2] Title VII of the Dodd-Frank Act provides the Commission and the Commodity Futures Trading Commission ("CFTC") with the authority to regulate over-the-counter ("OTC") derivatives in light of the recent financial crisis, which demonstrated the need for enhanced regulation of the OTC derivatives market. The Dodd-Frank Act is intended to strengthen the existing regulatory structure concerning, and to provide the Commission and the CFTC with effective regulatory tools to oversee, the OTC swaps markets, which have grown exponentially in recent years and are capable of affecting significant sectors of the U.S. economy.

The Dodd-Frank Act provides that the CFTC will regulate "swaps," the Commission will regulate "security-based swaps," and the CFTC and the Commission will jointly regulate "mixed swaps."[3] The Dodd-Frank Act amends

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, H.R. 4173).

[2] *See* Public Law 111–203 Preamble.

[3] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System ("Federal Reserve"), shall further define the terms "swap," "security-based swap," "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant," "eligible contract participant," and "security-based swap agreement." These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term "eligible contract participant," in Section 1a(18) of the Commodity Exchange Act ("CEA"), 7 U.S.C. 1a(18), as re-designated and amended by Section 721 of the Dodd-Frank Act. Further, Section 721(c) of the Dodd-Frank Act requires the CFTC to adopt a rule to further define the terms "swap," "swap dealer," "major swap participant," and "eligible contract participant" to include transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Section 761(b) of the Dodd-Frank Act provides that the Commission may adopt a rule to further define the terms "security-based swap," "security-based swap dealer," "major security-based swap participant," and "eligible contract participant," with regard to security-based swaps, for the purpose of including transactions and entities that have been structured to evade Title VII of the Dodd-Frank Act. Finally, Section 712(a) of the Dodd-Frank Act provides that the Commission and CFTC, after consultation with the Federal Reserve, shall jointly prescribe regulations regarding "mixed swaps," as may be necessary to carry out the purposes of Title VII. To assist the Commission and the CFTC in further defining the terms specified above, and to prescribe regulations regarding "mixed swaps" as may be necessary to carry out the purposes of Title VII, the Commission and the CFTC have sought comment from interested parties. *See* Securities Exchange Act Release Nos. 63452 (December 7, 2010), 75 FR 80174 (December

the Exchange Act to require, among other things, the following with respect to transactions in SB swaps regulated by the Commission: (1) Transactions in SB swaps must be cleared through a clearing agency if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies; [4] (2) if the SB swap is subject to the clearing requirement, the transaction must be executed on an exchange or on a SB SEF registered under Section 3D of the Exchange Act or a SB SEF exempt from registration under Section 3D(e) of the Exchange Act, unless no SB SEF or exchange makes such SB swap available for trading or the SB swap transaction is subject to the clearing exception in Section 3C(g) of the Exchange Act; [5] and (3) transactions in SB swaps (whether cleared or uncleared) must be reported to a registered security-based swap data repository ("SDR") or the Commission.[6]

II. Regulatory Framework of Security-Based Swap Execution Facilities

Currently, SB swaps trade in the OTC market, rather than on regulated markets. Although some SB swaps have moved to centralized clearing, prior to the enactment of the Dodd-Frank Act, centralized clearing of SB swaps was not required. The current market for SB swaps is opaque, with little, if any, pre-trade transparency (the ability of market participants to see trading interest prior to a trade being executed) or post-trade transparency (the ability of market participants to see transaction information after a trade is executed). A key goal of the Dodd-Frank Act is to bring trading of SB swaps onto regulated markets,[7] as reflected in the statutory requirement that, subject to certain exceptions, any SB swap subject to mandatory clearing must be traded on a SB SEF or an exchange, unless no SB SEF or exchange makes such SB swap available for trading.

Section 763 of the Dodd-Frank Act amends the Exchange Act by adding various new statutory provisions to govern the regulation of SB SEFs.[8] Section 3C(h) of the Exchange Act specifies that transactions in SB swaps that are subject to the clearing requirement of Section 3C(a)(1) of the Exchange Act must be executed on an exchange or on a SB SEF registered with the Commission (or a SB SEF exempt from registration), unless no exchange or SB SEF makes the SB swap available to trade (referred to as the "mandatory trade execution requirement") or the SB swap transaction is subject to the clearing exception in Section 3C(g) of the Exchange Act ("end-user exception").[9] Further, Section 3D(a)(1) of the Exchange Act states that no person may operate a facility for the trading or processing of SB swaps, unless the facility is registered as a SB SEF or as a national securities exchange under that section.[10] Under Section 3D(b) of the Exchange Act, a SB SEF registered with the Commission may make SB swaps available for trading and facilitate trade processing of SB swaps.[11] Section 3D(c) of the Exchange Act requires a national securities exchange, to the extent it also operates a SB SEF and uses the same electronic trade execution system for listing and executing trades in SB swaps, to identify whether electronic trading of SB swaps is taking place on or through the exchange or the SB SEF.[12]

Section 3D(d) of the Exchange Act specifies that to be registered and maintain registration, a SB SEF must comply with fourteen Core Principles enumerated therein and any requirement that the Commission may impose by rule or regulation.[13] The Core Principles applicable to SB SEFs are captioned: (1) Compliance with Core Principles; (2) Compliance with Rules; (3) Security-Based Swaps Not Readily Susceptible to Manipulation; (4) Monitoring of Trading and Trade Processing; (5) Ability to Obtain Information; (6) Financial Integrity of Transactions; (7) Emergency Authority; (8) Timely Publication of Trading Information; (9) Recordkeeping and Reporting; (10) Antitrust Considerations; (11) Conflicts of Interest; (12) Financial Resources; (13) System Safeguards; and (14) Designation of Chief Compliance Officer.[14] As a result, a registered SB SEF would have certain regulatory obligations with respect to overseeing its market and the participants that trade on its facility. Further, Section 3D(f) of the Exchange Act states that the Commission shall prescribe rules governing the regulation of SB SEFs.[15] Finally, Section 3(a)(77) of the Exchange Act defines a SB SEF as a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: (1) Facilitates the execution of SB swaps between persons; and (2) is not a national securities exchange.[16]

As regulated markets for the trading of SB swaps, SB SEFs, as well as exchanges that post or trade SB swaps ("SBS exchanges"), are intended to play an important role in enhancing the transparency and oversight of the market for SB swaps. SB SEFs should help further the statutory objective of greater transparency and a more competitive environment for the trading of SB swaps by providing a venue for multiple parties to execute trades in SB swaps and also by serving as a conduit for information regarding trading interest in SB swaps. As a result of the Dodd-Frank Act's provisions relating to SB SEFs, the Commission would have access to information on the trading of SB swaps that occurs on SB SEFs and information regarding trading by their participants. In addition, because SB SEFs would have certain regulatory obligations arising from their Core

21, 2010) (File No. S7–39–10) (proposed rulemaking regarding definitions contained in Title VII of the Dodd-Frank Act relating to participants). The Commission also will propose rules regarding definitions contained in Title VII of the Dodd-Frank Act relating to products in a separate proposed rulemaking. *See also* Securities Exchange Act Release No. 62717 (August 13, 2010), 75 FR 51429 (August 20, 2010) (File No. S7–16–10) (advance joint notice of proposed rulemaking regarding definitions contained in Title VII of the Dodd-Frank Act).

[4] *See* Public Law 111–203, § 763(a) (adding Section 3C(a)(1) of the Exchange Act).

[5] *See* Public Law 111–203, § 763(a) (adding Section 3C(h) of the Exchange Act). *See also* Public Law 111–203, § 761(a) (adding Section 3(a)(77) of the Exchange Act), defining the term "security-based swap execution facility." The Dodd-Frank Act amends the CEA to provide for a similar regulatory framework with respect to transactions in swaps regulated by the CFTC.

[6] *See* Public Law 111–203, § 761(a)(75) (adding Section 3(a)(75) of the Exchange Act) (defining the term "security-based swap data repository"). The registration of an SDR and the reporting of SB swaps are the subject of separate Commission rulemakings. *See* Securities Exchange Act Release Nos. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (File No. S7–35–10) ("SDR Release") and 63346 (November 19, 2010), 75 FR 75208 (December 2, 2010) (File No. S7–34–10) ("Reporting and Dissemination Release").

[7] *See* Public Law 111–203, preamble.

[8] *See* Public Law 111–203, § 763 (adding Sections 3C and 3D of the Exchange Act).

[9] *See* Public Law 111–203, § 763 (adding Section 3C(h) of the Exchange Act).

[10] *See* Public Law 111–203, § 763(a) (adding Section 3D(a)(1) of the Exchange Act). The Commission views this requirement as applying only to facilities that meet the definition of "security-based swap execution facility" in Section 3(a)(77) under the Exchange Act. SB swaps that are not subject to the mandatory trade execution requirement would not have to be traded on a registered SB SEF and could be traded in the over-the-counter ("OTC") market for SB swaps.

[11] *See* Public Law 111–203, § 763(c) (adding Section 3D(b) of the Exchange Act).

[12] *See* Public Law 111–203, § 763(c) (adding Section 3D(c) of the Exchange Act).

[13] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(1)(A) of the Exchange Act).

[14] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(1)–(14) of the Exchange Act).

[15] *See* Public Law 111–203, § 763(c) (adding Section 3D(f) of the Exchange Act).

[16] *See* Public Law 111–203, § 761(a) (adding Section 3(a)(77) of the Exchange Act).

Principles, such as monitoring trading, assuring the ability to obtain information, and establishing and enforcing rules and procedures to ensure the financial integrity of SB swaps entered on or though the SB SEF, these facilities can play an important role in helping to oversee the market for SB swaps on an ongoing basis and allowing regulators to quickly assess information regarding the potential for systemic risk across trading venues.

The Commission is mindful that any rules that the Commission may adopt regarding the regulation of SB SEFs could impact the incentives for existing or prospective platforms for the trading of SB swaps to enter or withdraw from this market. On the other hand, the rules to be adopted by the Commission for the trading of SB swaps should be sufficient to fulfill the objectives of the Dodd-Frank Act to promote financial stability and transparency. The Commission also is mindful that, both over time and as a result of Commission proposals to implement the Dodd-Frank Act, the further development of the SB swap market may alter some of the specific calculus for future regulation of SB SEFs.

The Commission notes that the CFTC is proposing rules relating to swap execution facilities ("SEFs") as required under Section 733 of the Dodd-Frank Act.[17] Because there are differences between the markets and products that the Commission and the CFTC currently regulate, the approach that each agency may take regarding the regulation of SB SEFs and SEFs, respectively, also may differ in various respects. The Commission recognizes that commenters may respond to the Commission's proposals by referring to the CFTC's proposals and welcomes commenters' views and suggestions on the impact of any differences between the Commission and CFTC approaches to the regulation of SB SEFS and SEFs. The Commission is particularly interested in whether its proposed rulemaking would result in any duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or would result in gaps between those regimes.

Further, the Commission is aware that regulators in other countries are considering reform of their swaps and derivatives markets and are interested in achieving a consistent approach to swaps regulation between the United States, Europe and other jurisdictions to mitigate the risk of regulatory arbitrage.[18] Although the Commission must be guided by the requirements of the Dodd-Frank Act in crafting proposed rules applicable to markets that trade SB swaps and the participants in those markets, the Commission recognizes that the particular rules that it may adopt under the Dodd-Frank Act may impact the incentives of market participants with respect to where they choose to engage in the trading of SB swaps.

Commenters are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for SB swaps (or, vice versa, the role that market developments may play in changing the nature and implications of regulation) and specifically to focus on this issue with respect to the proposals to establish a framework for the trading of SB swaps. In addition, commenters are urged to consider the effect of the Commission's proposals relating to SB SEFs on the global swaps and derivatives markets and to offer specific comments regarding how the proposals compare with the existing or proposed regulations of other jurisdictions.

III. The Definition of Security-Based Swap Execution Facilities

Since the enactment of the Dodd-Frank Act in July 2010, the Commission has engaged in a number of outreach programs relating to the legislation's rulemaking mandates, including trading of SB swaps on regulated markets.[19] On September 15, 2010, the staff of the Commission and of the CFTC conducted a joint roundtable to discuss issues related to the formation and regulation of SEFs and SB SEFs ("Roundtable").[20] Topics discussed at the Roundtable included the scope of the definition of a SEF and SB SEF; registration of these facilities; products that would trade on a SEF and SB SEF; block trades; access to SEFs and SB SEFs; and cross-market issues.[21] The purpose of the Roundtable was to provide a forum for the discussion of these issues and to assist SEC and CFTC staff as they developed proposed rules to meet the Dodd-Frank Act's mandate to bring the trading of swaps and SB swaps subject to the mandatory clearing requirement onto organized markets. Panelists at the Roundtable provided comments on their experience with the current market structure for the trading of swaps and SB swaps and offered their views and suggestions on ways that that structure could change as a result of the legislation. Pursuant to the Commission's outreach, a range of individuals and entities, including swap dealers, brokers, end-users, academics and others, have expressed their views on a variety of topics, such as the scope of activities or the nature of platforms that should fall within the statutory definition of "security-based swap execution facility."[22]

Many letters from market participants advocated for a flexible interpretation of the statutory definition of SB SEF.[23] In their letters, they argued that the definition of SB SEF should permit many different types of existing and new trading and execution platforms.[24] Certain market participants noted that the SB swap market is more customized and illiquid than the cash equities market and argued that a broad range of trading models would be necessary to address the SB swap market's unique characteristics and to allow this market to develop properly.[25]

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[17] *See* Public Law 111–203, § 733 (adding Section 5h of the CEA). *See also* 76 FR 1214 (January 7, 2011) ("Notice of proposed SEF rulemaking by the CFTC").

[18] *See, e.g.,* Committee of European Securities Regulators ("CESR"), CESR Technical Advice to the European Commission in the context of the MiFID Review and Responses to the European Commission for Additional Information, dated October 13, 2010, available at *http://www.cesr-eu.org/index.php?page=contenu_groups&id=61&docmore=1.*

[19] *See, e.g.,* Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, Transparency, Public Input on SEC Regulatory Initiatives under the Dodd-Frank Act Title VII—Wall Street Transparency and Accountability, Mandatory Exchange Trading and Swap Execution Facilities, available at *http://www.sec.gov/spotlight/dodd-frank.shtml.*

[20] *See* Securities Exchange Release No. 62864 (September 8, 2010), 75 FR 55574 (September 13, 2010) (File No. 4–612). Webcast available at *http://www.sec.gov/news/openmeetings/2010/jac091510.shtml.*

[21] *See* Press Release issued by the Commission on September 8, 2010, "SEC, CFTC To Host Joint September Roundtables On Swap and Security-Based Swap Matters" (File No. 2010–166), available at *http://www.sec.gov/news/press/2010/2010-166.htm.*

[22] *See, e.g., http://www.sec.gov/spotlight/dodd-frank.shtml.*

[23] *See, e.g.,* letter from Ben Macdonald, Global Head Fixed Income, Bloomberg LP, to Commission, dated September 22, 2010 ("Bloomberg Letter"), at 2; letter from Richard H. Baker, President and CEO, Managed Funds Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 22, 2010 ("MFA Letter"), at 16; letter from Ernest C. Goodrich, Jr., Managing Director—Legal Department, and Marcelo Riffaud, Managing Director—Legal Department, Deutsche Bank AG, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated October 6, 2010 ("Deutsche Bank Letter"), at 5–6 and 8–9; and letter from Larry Tabb, CEO and Founder, Andy Nybo, Head of Derivatives, and Kevin C. McPartland, Senior Analyst, TABB Group, to Gary Gensler, Chairman, CFTC, and Mary Schapiro, Chairman, Commission, dated August 23, 2010 ("TABB Letter"), at 2.

[24] *See, e.g.,* Bloomberg Letter, *id.,* at 2; MFA Letter, *id.,* at 16; and Deutsche Bank Letter, *id.,* at 7.

[25] *See, e.g.,* Bloomberg Letter, *supra* note 23, at 2, and Deutsche Bank Letter, *supra* note 23, at 6–7. *See also infra,* Section III.B for a discussion of the

Although many commenters who expressed a view regarding the definition of SB SEF favored allowing multiple platforms,[26] some commenters expressed concern about some types of platforms that potentially could meet the definition of SB SEF. One commenter believed that allowing multiple request for quote ("RFQ") platforms,[27] without a price mechanism that aggregates prices across platforms, to meet the definition of SB SEF, could lead to a fragmented market, which could discourage competition.[28] Another commenter suggested that permitting an RFQ platform to be treated as a SB SEF could be viewed as preserving the *status quo* of a dealer-dominated market and believed that the Dodd-Frank Act envisioned that SB swaps would be traded on a facility akin to a limit order book platform.[29]

The Commission also received other specific views about platforms that commenters believed should or should not be included in the definition of SB SEF. For example, one commenter believed that platforms that would not trade or execute SB swap transactions, such as pure trade processing facilities, would not meet the statutory definition of SB SEF.[30] A market participant, however, stated that in its view the statutory definition of SB SEF would encompass pure trade processing facilities.[31]

The information presented at the Roundtable and received from the public has helped to inform the proposals relating to SB SEFs that are part of this rulemaking. The Commission is mindful that there exists a wide range of views on the part of market participants and others about the nature of the activities or systems that would constitute, and the scope of activities permitted by, a SB SEF and therefore encourages interested persons to provide their views and suggestions, as well as any materials or data to support their positions, on this aspect of the proposed rulemaking. The Commission believes that the prudent course is to take where appropriate a deliberate and attentive approach to its regulation of SB SEFs that is informed by the state of development of SB swap trading on regulated markets. The Commission emphasizes, however, that any actions it may take now or in the future would be designed to further the overall objectives of the Dodd-Frank Act.

A. Current SB Swap Market

1. Trading Models

Unlike the markets for cash equity securities and listed options, the market for SB swaps currently is characterized by bilateral negotiation in the OTC swap market; is largely decentralized; many instruments are not standardized; and many SB swaps are not centrally cleared. The lack of uniform rules concerning the trading of SB swaps and the one-to-one nature of trade negotiation in SB swaps has resulted in the formation of distinct types of venues for the trading of these securities, ranging from bilateral negotiations carried out over the telephone, to single-dealer RFQ platforms, to multi-dealer RFQ platforms, to central limit order books outside the United States, and others, as more fully described below. The use of electronic media to execute transactions in SB swaps varies greatly across trading venues, with some venues being highly electronic whereas others rely almost exclusively on non-electronic means such as the telephone. The reasons for use of, or lack of use of, electronic media vary from such factors as user preference to limitations in the existing infrastructure of certain trading platforms. The description below of the ways in which SB swaps may be traded is based in part on discussions with market participants. The Commission solicits comments on the accuracy of this description.

The Commission uses the term "bilateral negotiation" to refer to the model whereby one party uses the telephone, e-mail or other communications to contact directly a potential counterparty to negotiate a SB swap. Once the terms are agreed, the SB swap transaction is executed and the terms are memorialized.[32] In a bilateral negotiation, there may be no pre-trade or post-trade transparency available to the marketplace because only the two parties to the transaction are aware of the terms of the negotiation and the final terms of the agreement. Further, no terms of the proposed transaction are firm until the transaction is executed. However, reputational costs generally serve as a deterrent to either party's failing to honor any quoted terms. Dealer to customer bilateral negotiation currently is used for all SB swap asset classes, and particularly for trading in less liquid SB swaps, in situations where the parties prefer a privately negotiated transaction, such as in executing block trades, or in other circumstances in which it is not cost effective for a party to the trade to use one of the execution methods described below.

Another model for the trading of SB swaps is the single-dealer RFQ electronic trading platform. In a single-dealer RFQ platform, a dealer may post indicative quotes for SB swaps in various SB swap asset classes that the dealer is willing to trade. Only the dealer's approved customers would have access to the platform. When a customer wishes to transact in a SB swap, the customer requests an executable quote, the dealer provides one, and if customer accepts the dealer's quote, the transaction is executed electronically. If the dealer repeatedly responds to requests for executable quotes with quotes that are significantly less favorable than the dealer's indicative quotes posted on the single-dealer electronic trading platform, volume on the platform presumably would diminish and participants may no longer transact there. This type of platform generally provides pre-trade transparency in the form of indicative quotes on a pricing screen, but only from one dealer to its customer. Currently, there is no post-trade reporting of transactions on single-dealer platforms and thus there is no post-trade transparency.

A variant of the single-dealer model is an aggregator-type platform that combines two or more single-dealer RFQ platforms. In such a platform, a customer who has access to the platform, which is determined solely at the discretion of its operator and of the dealers involved, may see indicative quotes from multiple dealers at once instead of seeing quotes only from one

Commission's interpretation of the definition of SB SEF.

[26] *See supra* note 23 and accompanying text.

[27] In referring to a RFQ platform, the Commission means a trading platform where a customer who wishes to execute a SB swap disseminates a request for quote to one or more dealers and one or more of those dealers respond to the request with an executable quote.

[28] *See, e.g.,* Commentary by S. "Vish" Viswanathan, Professor, Fuqua School of Business, Duke University, at the Roundtable. Webcast available at *http://www.sec.gov/news/openmeetings/2010/jac091510.shtml.*

[29] *See* Commentary by Heather Slavkin, Senior Legal Policy Advisor for the Office of Investment, AFL–CIO, at the Roundtable. Webcast available at *http://www.sec.gov/news/openmeetings/2010/jac091510.shtml. See also infra,* Section III.B discussing the Commission's interpretation taking into account concerns raised by commenters.

[30] *See* letter from Mark D. Young, Skadden, Arps, Slate, Meagher & Flom LLP, to David A. Stawick, Secretary, CFTC, and Elizabeth M. Murphy, Secretary, Commission, dated September 22, 2010, at 3.

[31] *See* Meetings with SEC Officials: Memorandum from the Division of Trading and Markets regarding an August 25, 2010 Meeting with representatives of MarkitSERV, dated September 2, 2010, MarkitSERV PowerPoint Presentation, dated August 25, 2010 at p. 5–6, available at *http://www.sec.gov/comments/s7-16-10/s71610-96.pdf.*

[32] For further discussion, *see, e.g.,* Securities Exchange Act Release No. 63727 (January 14, 2011), 76 FR 3859 (January 21, 2011) (proposing rules for the trade acknowledgement and verification of security-based swaps).

dealer as in the single-dealer RFQ platform. Although a participant can simultaneously view quotes from multiple dealers, the participant can request a firm quote from only one dealer at a time. One feature of the aggregated single-dealer platform as compared to the bilateral negotiation and single-dealer models described above is the ability of a participant in the aggregated single-dealer platform to see indicative quotes from multiple dealers. However, customers are not afforded an opportunity to send RFQs to multiple dealers at the same time to promote competitive pricing. Also, like the single-dealer electronic platform, there is no post-trade reporting of transactions and thus there is no post-trade transparency.

A third model is the multi-dealer RFQ electronic trading platform.[33] In a multi-dealer RFQ system, a requester can send an RFQ to solicit quotes on a certain SB swap from multiple dealers at the same time. Currently, dealers on a multi-dealer RFQ platform generally require the platform to set limits on the number of dealers to whom a customer may send an RFQ, and also may limit which dealers may participate on the platform. These platforms are sometimes owned by dealers themselves. After the RFQ is submitted, the recipients have a prescribed amount of time in which to respond to the RFQ with a quote. Responses to the RFQ are firm. The requestor then has the opportunity to review the responses and accept the best quote. A multi-dealer RFQ platform provides a certain degree of pre-trade transparency, depending on its characteristics. But to the extent that a requester is restricted by platform rules to soliciting quotes from a limited number of dealers, the customer's pre-trade transparency is restricted to that number of quotes it receives in response to its RFQ. In some instances requestors may prefer to limit the number of recipients of an RFQ as a way to protect proprietary trading strategies as dissemination of their interest to multiple dealers may increase hedging costs to dealers, and thus costs to the requestors as reflected in the prices from the dealers. Pre-trade transparency may also exist through the platform's dissemination of composite indicative quotes to all participants prior to trades. Post-trade transparency may exist if the platform chooses to disseminate information regarding executed transactions.

A fourth model for the trading of SB swaps is a limit order book system or similar system, which the Commission understands is not yet in operation for the trading of SB swaps in the United States but exists for the trading of SB swaps in Europe. Today, securities and futures exchanges in the United States display a limit order book in which firm bids and offers are posted for all participants to see, with the identity of the parties withheld until a transaction occurs. Bids and offers are then matched based on price-time priority or other established parameters and trades are executed accordingly. The quotes on a limit order book system are firm. A limit order book system may be a more suitable model for the trading of more liquid, rather than less liquid, SB swaps. In general, a limit order book system also provides greater pre-trade transparency than the three platforms described above because all participants can view bids and offers before placing their bids and offers. However, broadly communicating trading interest, particularly about a large trade, may increase hedging costs, and thus costs to investors as reflected in the prices from the dealers. The system can also provide post-trade transparency, to the extent that participants can see the terms of executed transactions.

A fifth type of trading, which the Commission herein refers to as "brokerage trading," is used by brokers to execute SB swap trades on behalf of customers, often in larger sized transactions. In such a system, a broker receives a request from a customer (which may be a dealer) who seeks to execute a specific type of SB swap. The broker then interacts with other customers to fill the request and execute the transaction. The mode of interaction can vary depending on the size of the trade and the type of SB swap being traded. In some cases, the interaction is done purely by voice over the telephone, while in other cases, the interaction is electronic or a hybrid of voice and an electronic system. The level of automation and use of electronic means also vary depending on the technological state and functionality of the broker's platform.[34] This model often is used by dealers that seek to transact with other dealers through the use of an interdealer broker as an intermediary. In this model, there may be pre-trade transparency to the extent that participants are able to see bids and offers of other participants and post-trade transparency to the extent that participants can see the terms of executed transactions.

The five foregoing examples represent broadly the various types of models for the trading of OTC swaps in existence today. These examples may not represent every single method in existence today and the discussion above is intended to give an overview of the models without providing the nuances of each particular type.

2. The SB Swap Market and the Commission's Approach to SB SEF Definitions

In the Commission's view, the diverse nature of these examples demonstrates the extent to which, when compared with the equities markets, certain aspects of the SB swap market are still evolving.[35] In considering ways in which the Commission could approach the definition of SB SEF, the Commission has sought to facilitate competition and innovations in the SB swap market that could be used to promote more efficient trading in organized, transparent and regulated trading venues. The Commission does not believe it should simply overlay the same regulatory structure that is currently in place for equities, given important differences in the nature and maturity of the SB swap and equities markets. However, the Commission does believe that certain elements of equity

[33] The single-dealer RFQ platform is an example of a system that permits customers to submit an RFQ to a single dealer, which is distinct from a multi-dealer RFQ platform that permits customers to solicit quotes from multiple dealers simultaneously instead of one dealer. The multi-dealer RFQ platform differs from a single-dealer aggregator platform because a participant in the aggregated single-dealer platform may only send a request to one dealer at a time and thus would not have the ability to interact with the bids or offers of multiple dealers simultaneously.

[34] The Commission understands that a small portion of the brokerage trading in the United States is currently highly automated and has characteristics of a limit order book. However, while depth of the order book may be displayed, generally there may be only one bid or offer, and sometimes only one side of the market would be displayed (*i.e.,* a bid without an offer and vice versa). Because the volume in some SB swaps may be low, the electronic systems maintained by wholesale brokers would not necessarily include a matching engine that would provide for price-time priority or other execution parameters, unlike other types of electronic limit order books. Although the wholesale brokers' systems are electronic, the customer would need to perform some steps manually (*e.g.,* hit the bid or lift the offer) to execute a trade.

[35] For example, data from the Depository Trust and Clearing Corporation covering the period from March 22, 2010 to June 20, 2010 for single name credit default swaps revealed the following: Out of 998 types of swaps (*i.e.,* a swap based on one reference entity), only 55 had 10 or more trades per day (34 trades being the highest), and 827 of the swaps had 5 or fewer trades per day (531 of those only had 2 or fewer trades per day). In the data set, "trades per day" includes all tenors (*e.g.,* duration or expiry) in swaps of the same reference entity. *See http://www.dtcc.com/downloads/products/derivserv/CDS_Snapshot_Analysis_Sep17-2010.pdf; see also http://www.dtcc.com/products/derivserv/data_table_snap0002.php* and *http://www.dtcc.com/products/deriserv/data_table_snapshot.php.*

market structure may be directly relevant to the SB swap market.

Furthermore, rather than proposing a rule that would establish a prescribed configuration for SB SEFs that would meet the statutory definition of SB SEF, the Commission proposes to provide baseline principles interpreting the definition of SB SEF, consistent with the requirements of the Exchange Act, as amended by the Dodd-Frank Act, which any entity would need to be able to meet to register as a SB SEF. Such an approach is designed to allow flexibility to those trading venues that seek to register with the Commission as a SB SEF and to permit the continued development of organized markets for the trading of SB swaps. This more flexible approach also would allow the Commission to monitor the market for SB swaps and propose adjustments, as necessary, to any interpretation that it may adopt as this market sector continues to evolve.

However, the Commission recognizes that, consistent with the Dodd-Frank Act, the interpretation of the definition of SB SEF should: (1) Encourage the migration of trading SB swaps from the OTC market to SB SEFs (or exchanges), (2) provide a meaningful distinction between a SB SEF and an OTC trading venue, (3) promote further transparency of the SB swap market, and (4) to facilitate competition and innovation in the SB swap markets that could be used to promote more efficient trading in organized, transparent, and regulated trading venues. In addition, the interpretation of the definition of SB SEF should complement other aspects of proposed SB swap regulations, including those related to post trade transparency, mandatory clearing, and the general requirement that SB swaps that are subject to mandatory clearing only be traded on an exchange or SB SEF, unless no exchange or SB SEF makes the SB swap available to trade.

B. Scope of SB SEF Definition

As noted above, Section 3(a)(77) of the Exchange Act defines a SB SEF as a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: (1) Facilitates the execution of SB swaps between persons; and (2) is not a national securities exchange.[36]

A key issue noted at the Roundtable and raised by market participants generally regarding Dodd-Frank Act implementation is the scope of the definition of "security-based swap execution facility."[37] SB swap industry participants have expressed an interest in, and offered their views on, the parameters of the definition of SB SEF.[38] Such participants asserted that the interpretation of the definition of SB SEF is a significant issue for the SB swap industry because, under the mandatory trade execution requirement in Section 3C(h) of the Exchange Act, a SB swap subject to mandatory clearing must be executed on a SB SEF or on an exchange, if made available for trading. The discussion below sets forth the Commission's preliminary view as to the meaning of the various elements of this definition.

The "multiple participant to multiple participant" requirement in the definition of SB SEF prescribes that "multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system."[39] Consistent with this requirement, the Commission proposes to interpret the definition of SB SEF to mean a system or platform that allows more than one participant to interact with the trading interest of more than one other participant on that system or platform. The Commission notes that this definition can be satisfied by various types of platforms, but some platforms that are currently used to trade SB swaps in the OTC market would not meet this definition, and would not be considered SB SEFs. As noted above, the Commission is aware that the movement of SB swaps trading onto regulated platforms is still in an emergent stage. Therefore, in considering ways in which the Commission could approach the definition of SB SEF, the Commission has sought to facilitate competition and innovations in the SB swaps market that could be used to promote more efficient trading in organized, transparent and regulated trading venues to support the Dodd-Frank Act's goal of moving the trading of SB swaps onto regulated markets.

Under this proposed interpretation, if a system or platform were to allow an individual participant (of which there must be more than one on the system, but which do not need to be acting simultaneously) to send, at the same time, a single RFQ to all other liquidity providing participants on that system or platform and view responses from those participants, the Commission believes that such a model would satisfy the requirements of the statutory definition, even if the quote requesting participants are acting at different times. A key element to this model is that the SB SEF would not be able to limit the number of liquidity providing participants from whom a participant could request a quote on the SB SEF.[40]

The Commission further believes that the requirements of the statutory definition would be met if the system or platform not only provided the quote requesting participant with the ability to send a single RFQ to all liquidity providing participants, but also provided the quote requesting participant with the ability to choose to send an RFQ to fewer than all liquidity providing participants. In the Commission's view, a system or platform that affords a quote requesting participant the ability to send an RFQ to all participants, but also permits the quote requesting participant to choose to send an RFQ to fewer participants, would satisfy the statutory definition because multiple participants would have *the ability* to execute or trade SB swaps by accepting bids or offers made by multiple participants. The person exercising investment discretion for the transaction, whether it is the participant itself or the participant's customer, would be the person that would have the ability to choose to send the RFQ to less than all participants, as they would be in the best position to determine the impact on their interest of a broad or narrow dissemination of their RFQ.[41]

Under the proposed interpretation of the definition of SB SEF, a SB SEF would be able to offer functionality to a participant (or a participant's customer) enabling that participant to choose to send a single RFQ to any number of specific liquidity providing participants on the SB SEF, including just a single liquidity provider. The

[36] As discussed *infra* Section XXI, an entity that meets the definition of SB SEF would be required to register as a SB SEF or a national securities exchange (unless exempted under Section 3D(e) of the Exchange Act if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the CFTC). A registered SB SEF would be required to satisfy all 14 Core Principles and any rules promulgated by the Commission, including proposed Rule 811(a)(3), which provides for certain requirements relating trading on a SB SEF. *See* Public Law 111–203, § 763(c) (adding Section 3D(a)(1) and (d)(1) of the Exchange Act).

[37] *See, e.g.,* Bloomberg Letter, *supra* note 23, at 2, and MFA Letter, *supra* note 23, at 16.

[38] *See supra* notes 23 to 25.

[39] *See* Public Law 111–203, § 763(a) (adding Section 3(77) of the Exchange Act).

[40] *See infra* Section VIII.C.

[41] Regardless of the number of participants to which a RFQ was sent, the response(s) to that RFQ would be required to be included in the composite indicative quote of the SB SEF. *See infra* note 152 and accompanying text.

Commission requests comment on whether in addition to providing this flexibility to investors initiating RFQs, the interpretation should also set a floor for the minimum number of liquidity providers that must be included in an RFQ (and, if so, what that minimum number should be). Commenters should be mindful that in proposing its interpretation of the definition of SB SEF, the Commission is trying to balance the above-stated goal of encouraging SB swap trading to move onto regulated markets with the goal of promoting greater transparency in the trading of SB swaps.

On the one hand, providing investors as much choice as possible in determining how to route an RFQ on a SB SEF may incentivize investors to trade on a SB SEF when they otherwise might not have made that choice. Since those investors that have a fiduciary duty must seek best execution for a transaction, they may have a natural incentive to route to multiple dealers. However, this incentive may be impacted by the liquidity characteristics of the SB swap. Market participants, including dealers and buy-side customers, have raised concerns regarding pre-trade transparency of SB swap trades, particularly block trades. They believe that if other market participants know the terms of a trade prior to the time it is executed, those other market participants could attempt to profit from the information about the trade to the detriment of the initiator of the trade.[42] Therefore, particularly for illiquid SB swaps, an investor may determine that it is in its best interest not to broadly project its trading intention, and may choose to send a RFQ to one dealer.[43] Other investors could still benefit by the request because the response to that RFQ would become part of the composite indicative quote of that SB SEF.[44] Providing investors the choice to send a RFQ to only one dealer on a SB SEF—as long as they have the ability to send it to more than one if they chose to—may encourage investors to execute trades on a SB SEF even with respect to SB swaps that are not required to be traded on a SB SEF or an exchange, thus supporting the development of trading on regulated platforms and venues in the United States, rather than in other jurisdictions.

On the other hand, requiring that all RFQs on a SB SEF be sent to more than one dealer could force competition among dealers more than if RFQs to a single dealer were permitted. This competition may lead to lower spreads as dealers compete with each other on price. Further, this competition may provide for a more robust composite indicative quote because a greater number of responses would be incorporated into the composite. In addition, requiring that RFQs be sent to more than one dealer provides for the possibility that a response from a dealer other than the one with whom the investor may have "pre-arranged" the transaction will result in a better price. However, market participants have expressed a concern that requiring a broad level of pre-trade transparency, particularly for illiquid products, may not lead to better prices and in certain circumstances may lead to worse prices provided by dealers if dealer hedging is made more difficult after the intent to trade has been projected to the entire market.

In addition, the Commission proposes to interpret the statutory requirement that "multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system" to require a SB SEF to provide at least a basic functionality to allow any participant on the SB SEF the ability to make and display executable bids or offers accessible to all other participants on the SB SEF, if the participant chooses to do so. The Commission preliminarily believes that such a requirement would allow for increased price transparency beyond what would be found in the bilateral OTC market, if a market participant chooses to utilize the functionality to display a bid or offer.

Under the proposed interpretation of the definition of SB SEF (either with or without the additional requirement for a minimum number of liquidity providers to be included in every RFQ), the traditional bilateral negotiation model, as described above, would not fall within the definition of SB SEF because there would be only one party able to seek a quote and only one party that is able to provide a quote in response. The Commission believes that the inclusion of the phrase "through any means of interstate commerce" in the definition of SB SEF would not, by itself, support the proposition that bilateral negotiation would satisfy the definition's terms; the trading system or platform would still need to meet the other requirements of the definition, specifically, the requirement that multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system ("multiple participant to multiple participant requirement").

Likewise, a platform where there is a single dealer interacting with multiple customers on the other side of the transaction would not appear to meet the "multiple participant to multiple participant" requirement because the dealer is only one person. This would be true for aggregated single-dealer platforms as well, because a participant on such a platform may only submit one request at a time and receive only one response at a time, on a dealer-by-dealer basis.

The Commission proposes that the definition of SB SEF cannot be satisfied by the simple aggregation of trading interest across trading systems or platforms to meet the "multiple participant to multiple participant" requirement. That is, each trading method—when viewed in isolation—would need to individually meet the "multiple participant to multiple participant" requirement on its own. Thus, an entity that relies on a bilateral negotiation system with one participant on each end of the telephone or similar communication system, but with several such conversations occurring simultaneously, could not claim to meet the definition of SB SEF by asserting that when those conversations are viewed in the aggregate, *i.e.,* bilateral negotiation between persons A and B to facilitate one transaction, and bilateral negotiation between persons C and D, to facilitate a separate transaction, that the "multiple participant to multiple participant" requirement is met.[45] Two independent single-dealer platforms also may not be construed in the aggregate in order to meet the "multiple participant to multiple participant" requirement. In each of these situations, there is no opportunity for interaction among participants, except on a "one participant to one participant" basis.

However, a system or platform that provides for an auction for a class of SB swaps to be held at a prescribed time and that allows multiple participants to interact with each other, with trades executed pursuant to a pre-determined algorithm, could meet the proposed interpretation of the definition of SB SEF. In addition, the Commission believes that a limit order book system as described above for the trading of SB swaps could satisfy the proposed interpretation of the definition of SB

[42] *See* discussion in Section VIII.C and D *infra.*

[43] *See* Reporting and Dissemination Release, *supra* note 6, at 89–93.

[44] *See* discussion of proposed Rule 811(d)(5) in Section VIII.C *infra.*

[45] However, as discussed further below in the discussion of the application of the definition of SB SEF to wholesale brokers, if person A negotiates with persons B, C and D as part of the same transaction, the "multiple participant to multiple participant" requirements may be able to be met. *See infra* note 46 and accompanying text.

SEF. Such a model generally would allow interaction between multiple (*i.e.,* two or more) firm orders or bids and offers. Moreover, to satisfy the definition of SB SEF, a system or platform would not need to be limited to only one type of trading model. An entity that wishes to register as a SB SEF could operate different trading models for different SB swap products, as long as each trading system or platform on its own meets the interpretation of the definition of SB SEF that the Commission may adopt. For example, a SB SEF could operate both a multi-dealer RFQ mechanism for the trading of less liquid SB swaps and a limit order book for the trading of more liquid SB swaps.

The Commission has considered whether brokerage trading, as described above, would satisfy its proposed interpretation of the definition of SB SEF. On the one hand, brokerage trading relies to a certain degree on "voice" communication, such as telephonic communication between the broker and its customers. On the other hand, the wholesale broker [46] acts as an intermediary between various potential participants to a SB swap transaction, and may utilize electronic systems to display trading interest with which various participants could interact to transact in SB swaps. In some respects, the wholesale broker's role is similar to that of a floor broker on an exchange, in which the floor broker may use voice communication to find trading interest on the floor that can interact with an order from its customer. If after the wholesale broker receives a request from a customer (of which there must be more than one, but which do not need to be acting simultaneously) to execute a trade in a SB swap, and the broker then submits that request to all participants on the system or platform (or to less than all participants, if the customer has chosen to have the request sent to less than all participants), the Commission preliminarily believes that such a model could satisfy the Commission's proposed interpretation of the definition of SB SEF. Thus, the brokerage trading model may be able to satisfy the Commission's proposed interpretation of the definition of SB SEF to the extent that multiple participants would have access to the system or platform and their trading interest could interact with bids and offers of multiple other participants in that system or platform. Unless explicitly requested by the customer, for any given transaction if a wholesale broker typically acts only as the intermediary between a given customer and a single counterparty to facilitate the negotiation of a bilateral contract, the Commission does not believe this wholesale broker would meet the proposed interpretation of the definition of SB SEF. Because of the different variations of the wholesale broker system, however, each system would have to be evaluated on its own merits to determine whether it would meet the Commission's proposed interpretation of the definition of SB SEF.

The Commission's proposed interpretation of the definition of SB SEF would result in permitting to be registered as SB SEFs systems or platforms for the trading of SB swaps with a variety of features, and not just those systems or platforms with exchange-like features (for example, systems requiring all trading interest to be firm and displayed to all participants in the market). The concern with taking the latter approach is that the market for many SB swaps is fairly illiquid.[47] However, in the context of SB swaps that are subject to the mandatory clearing requirement, the Exchange Act requires that the trading of SB swaps must occur on a SB SEF or on an exchange, if the SB swap is made available for trading (unless certain exceptions apply). Thus, requiring every registered SB SEF to operate like a national securities exchange could result in (1) cleared SB swaps not being made available to trade on an exchange or SB SEF, with the result that SB swaps would continue to trade in the OTC SB swap market; or (2) if SB swaps subject to mandatory clearing are made available to trade on an exchange or SB SEF, the continued development of the SB swap market could be hindered, if participants are unwilling to display two-sided firm quotes to participants or if the requirement to do so results in bid-offer spreads that are so wide as to not be economical). If the definition of SB SEF is too narrowly construed, this could provide a disincentive for SB swap trading activity to move from the OTC swap market to regulated markets. A broader interpretation of the definition of SB SEF could have the beneficial result of increasing the proportion of trading occurring on regulated markets. Conversely, if the definition of SB SEF is too broadly construed, the Commission's regulatory scheme may not adequately advance the Dodd-Frank Act's goal of greater transparency. The Commission's proposed interpretation of the definition of SB SEF is intended to balance these concerns, promoting transparency as well as providing incentives for market participants to trade SB swaps on regulated markets pursuant to Commission rules and oversight, rather than in the OTC swap market.

The Commission notes that no matter what other functionality a SB SEF puts in place (for example, a multi-dealer electronic RFQ mechanism), it also would be required to provide a basic functionality to allow any participant on the SB SEF the ability to make and display executable bids or offers accessible to all other participants on the SB SEF, if the market participant chooses to do so.

Considering the early stage of development of the regulatory framework for the SB swap market and the existing structure of the SB swap market, the Commission is mindful that its interpretation of the definition of SB SEF, and the rules it is proposing herein to implement the Dodd-Frank Act, could have unforeseen consequences, either beneficial or undesirable, with respect to the shape that this market will take. In the Commission's view, it is important that the regulatory structure will provide incentives for the trading of SB swaps on regulated markets that are designed to foster greater transparency and competition that are subject to Commission oversight, while at the same time allow for the continued efficient innovation and evolution of the SB swap market. The Commission therefore is seeking where appropriate to take a deliberate and attentive approach to the regulation of SB SEFs that is informed by the state of development of the trading of SB swaps on regulated markets.

C. Request for Comments

The Commission seeks commenters' views and suggestions on its proposed interpretation of the definition of SB SEF. Comment is requested on whether the Commission's proposed interpretation, which would require an RFQ to be sent to all participants but would allow the quote requesting participant to query less than all participants, is appropriate, or whether it is too narrow or too broad. Are there other interpretations of the statutory definition that would promote price transparency and competition, as well as incenting market participants to trade on SB SEFs rather than in the OTC market? If so, please explain. Does the proposed ability of the quote requesting participant to choose to send a RFQ to less than all participants, raise any concerns? Should the decision to

[46] For purposes of this proposing release, the term "wholesale brokers" generally refers to brokers that intermediate transactions in SB swaps between dealers or between dealers and end users.

[47] *See supra* note 35.

exercise the ability to choose to send a RFQ to less than all participants be required on a transaction-by-transaction basis? Why or why not? When should the opt-out feature be permitted other than on a transaction-by-transaction basis? What would be the potential benefits or costs of allowing an RFQ to be submitted to only one participant? What would be the potential benefits or costs of requiring that an RFQ be sent to more than one participant? If the Commission were to require that an RFQ be sent to more than one participant, how many should be the minimum? Should the Commission require that an RFQ be sent to two participants? Five participants (which is the number proposed by the CFTC)?[48] Or some other number of participants? Which approach—allowing a RFQ to be sent to one participant or requiring a minimum number greater than one—would better promote transparency? Which approach would encourage greater trading of SB swaps on SB SEFs? What impact, if any, would the various approaches have on market participants' incentives to trade within the United States or in other jurisdictions? How should the Commission weigh the possibility that trading may move to other jurisdictions in determining how best to regulate markets within the United States? What would be the costs and benefits to such an approach? What if only a small number of dealers were willing to provide quotes on the platform or in a particular SB swap?

Should the proposed interpretation that affords the ability to opt to have a RFQ sent to less than all participants be limited to block trades? Should a proposed interpretation that affords the ability to opt to have a RFQ sent to one participant be limited to block trades? What would be the benefits and costs of allowing the opt-out flexibility, to any number of participants, for block trades? For non-block trades? Are there factors that would cause a different result for block trades versus non-block trades? Would the flexibility for participants to choose to send a RFQ to less than all participants, including to just one participant, help to address concerns about the impact of pre-trade transparency on dealers' incentives or ability to provide competitive prices, as discussed more fully in Section VIII.C? If so, how so? If not, why not?

The Commission also is interested in learning commenters' views on whether the market for SB swaps would be enhanced or adversely affected by its proposed interpretation of the definition of SB SEF and, if so, in what ways.

Should there be a requirement that the execution of trades or the submission of bids and offers be done electronically?

Would the proposed requirement that an SB SEF provide functionality to allow any participant on an SB SEF to make and display executable bids or offers accessible to all market participants on the SB SEF, if the market participants choose to do so, be beneficial? What, if any, impact would requiring this functionality have on access to the SB SEF, or liquidity of the SB swaps traded on the SB SEF? Should the proposed requirement be modified? If so, how? What would be the advantages and disadvantages of such a proposal? Do commenters believe that market participants would utilize this functionality? Should the Commission require any particular method of displaying such bids or offers? For example, should the Commission require that the SB SEF post all of these executable bids and offers on a centralized screen visible by all participants? What would be the advantages and disadvantages of having such a centralized screen? What other method could be utilized to display such bids and offers?

In addition, the Commission requests comment on the consequences of its proposed interpretation of the definition of SB SEF on existing platforms that may seek to register as a SB SEF and on those platforms that would not be able to meet the proposed interpretation of the definition of SB SEF. What kinds of changes would existing platforms need to make to their current structure to fall within the proposed interpretation of the definition of SB SEF? Are there existing platforms that would not be able to restructure to meet the proposed interpretation, *e.g.,* single-dealer RFQ platforms? If so, what impact, if any, would that outcome have on the market for SB swaps? Are single-dealer platforms likely to become obsolete as trading of certain SB swaps moves to SB SEFs? Or, are such platforms likely to continue to exist to support the OTC market? What impact would the proposed interpretation have on competition among existing trading platforms and liquidity in SB swaps as trading of certain SB swaps moves to SB SEFs? Are new platforms likely to emerge to trade SB swaps?

The Commission is interested in learning commenters' views on the effect on the SB swap market if certain trading platforms would not meet the proposed interpretation of the definition of SB SEF and would not be able to register as a SB SEF, and therefore no longer would be able to trade SB swaps that are subject to mandatory clearing and are made available to trade on a SB SEF or an exchange. Are there any types of trading venues so critical to the proper functioning of the SB swap market that the Commission should consider expanding the proposed interpretation of the definition of SB SEF so that such entities could qualify as SB SEFs? If so, what trading platforms are they and what kinds of conditions should they be subject to? Should any such expansion of the proposed interpretation of the definition of SB SEF to cover such platforms be temporary and, if so, for how long? What would be the impact of such action on any platform that could meet an unexpanded definition of SB SEF? Market participants have expressed concern about the trading of illiquid SB swaps once platforms are configured to meet the statutory definition of SB SEF, particularly in light of the mandatory trade execution requirement. The Commission requests comment on the effect of its proposed interpretation of the definition of SB SEF on the trading of illiquid SB swaps. Would a multi-dealer RFQ system as discussed above sufficiently accommodate the trading of illiquid SB swaps? If not, what other models could meet the statutory definition of SB SEF and accommodate the trading of illiquid SB swaps? Would an interpretation of the definition of SB SEF that would allow an investor to choose to send an RFQ to one participant effectively accommodate the trading of illiquid SB swaps? Would an interpretation of the definition of SB SEF that would require that an RFQ be sent to more than one participant effectively accommodate the trading of illiquid SB swaps? In responding to these questions, the Commission requests that commenters take into account the Commission's discussion of SB swaps that are made available to trade in Section VIII.B below.

The discussion above contains several examples of trading models that the Commission believes would meet the statutory definition of SB SEF. Are there other trading models not discussed above that would meet the statutory definition of SB SEF? The discussion above also contains several examples of trading models that the Commission believes would not meet the statutory definition of SB SEF. Are there other models that should be excluded from the proposed interpretation?

The Commission seeks commenters' views on the role of wholesale brokers in the SB swap market and its view that trading of SB swaps by such brokers

[48] *See* Notice of proposed SEF rulemaking by the CFTC, *supra* note 17 (requiring that RFQs be disseminated to at least five participants).

potentially could satisfy the proposed interpretation of the definition of SB SEF. As noted above, the Commission has identified bilateral negotiation, *e.g.,* a trade occurring between two parties via the telephone, as a model that would not meet its proposed interpretation of the definition of a SB SEF. The Commission understands that wholesale brokers often act as intermediaries in executing SB swap transactions and may engage in bilateral negotiation when they attempt to complete an order. The Commission further understands that the orders that wholesale brokers attempt to fill may be large and that, as a result, they may interact with multiple participants in attempting to execute the transactions. The Commission also understands that these brokers may also maintain electronic systems for the display of trading interest that their customers can access. Do commenters agree that bilateral negotiation by wholesale brokers, by itself, should not meet the proposed interpretation of the definition of SB SEF? Is the Commission's view correct that there are ways in which wholesale brokers could restructure their operations to meet the proposed interpretation of the definition of SB SEF? How would such platforms or systems be structured to meet the proposed interpretation? What would be the impact on the SB swap market of any restructuring of a wholesale broker's business to meet the Commission's proposed interpretation of the definition of SB SEF, particularly in light of the fact that trades in SB swaps today frequently occur through bilateral negotiation? For those wholesale brokers that currently effect transactions in SB swaps, would the modifications that a wholesale brokerage firm would be required to make to satisfy the proposed interpretation of the definition of SB SEF, the proposed rules implementing the Core Principles, and the proposed registration requirements be too costly or otherwise impracticable to meet so that the firm would find it difficult to register as a SB SEF? The Commission recognizes that wholesale brokerage activities differ from dealer to customer activities in effecting SB swap transactions. Certain proposed requirements discussed below, such as impartial access, may affect wholesale brokers differently than SB SEFs that are not operated by such brokers. Comment is requested on any such different impact on wholesale brokers that intend to operate SB SEFs, including the costs and benefits of such impact. Should the Commission view wholesale brokers' SB SEF operations differently than the operations of other SB SEFs? If so, how so?

Another example of a trading platform that could meet the proposed interpretation of the definition of SB SEF would include a multi-dealer RFQ model. Do commenters agree that the definition of SB SEF should cover these types of trading platforms? If so, why? If not, why not?

Market participants also have expressed concern about any proposed interpretation of the definition of SB SEF that would result in others discerning their proprietary trading strategies. What would be the impact of the Commission's proposed interpretation of the definition of SB SEF on these concerns? Would one or more of the models discussed above that would meet the proposed interpretation of the definition of SB SEF provide an adequate level of comfort for these market participants? If not, is there a model that would meet the statutory definition of a SB SEF and yet account for these market participants' concerns?

As noted above, the Commission recognizes that the regulatory framework for the SB swap market is still in its early stages of development. What would be the impact on innovation in the SB swap market as a result of the proposed interpretation of the definition of SB SEF?

For example, under the proposed interpretation of the definition of a SB SEF, the SB SEF must provide a mechanism for the dissemination of firm quotes, if any, submitted by participants in the SB SEF. This functionality would allow a "limit order-book" model to emerge in parallel with other trading models on the SB SEF, including RFQ mechanisms, provided that each model meets all SB SEF requirements discussed above. The proposed interpretation is based on the premise that allowing more than one type of trading model to qualify as a SB SEF would, among other things, provide investors with more choices as well as encourage more types of SB swaps to trade on venues regulated by the Commission. Is there any scenario where this flexibility could impact competition or innovation because dealers may have their own preferences for one model over another? If so, under what scenario could this occur, and what consequences could result? For example, would the concentration of trading in the SB swap market raise concerns that, and provide incentives for, market participants that have a significant portion of the trading volume for certain types of SB swaps in one type of market structure to resist trading those SB swaps in a market structure that might otherwise be more efficient for that particular product?

The Commission also is interested in learning whether its proposed interpretation of the definition of SB SEF would influence market participants' decisions regarding the jurisdiction in which to execute their SB swap trades. Would the proposed interpretation affect a market participant's decision as to the jurisdiction in which to execute SB swaps transactions? If so, how? What other factors might also influence that decision, and how would those factors weigh against this factor? The Commission seeks commenters' views on whether, the ways in which, and to whom any migration to a different jurisdiction would be beneficial or adverse.

Commenters are urged, when considering all questions regarding the Commission's proposed interpretation of the definition of SB SEF, to take into account the rules being proposed by the Commission to implement the Core Principles, particularly the rules regarding the treatment and interaction of trading interest on a SB SEF, as discussed below.[49] The 14 Core Principles set forth in Section 3D(d) of the Exchange Act are integral to the regulation of a SB SEF. The Commission, in Sections VIII to XXII of this release, is proposing various rules to implement these Core Principles, as well as proposed registration requirements. The Commission also is interested in commenters' views on whether the Commission's proposed interpretation of the definition of SB SEF, along with its proposed rules implementing the Core Principles and proposed registration requirements, in the aggregate, are too permissive, are appropriate, or are too burdensome at this stage of development of the SB swap market. If commenters believe that the proposals in the aggregate are too permissive, the Commission is interested in being informed of ways in which they could be enhanced. If commenters believe that the proposals in the aggregate are too burdensome, the Commission is interested in being informed of ways in which they could be modified.

The Commission is interested in learning commenters' views on whether the combination of the proposed interpretation of the definition of SB SEF, its proposed rules implementing the Core Principles, and its proposed registration requirements would be too

[49] *See infra* Section VIII (discussing Core Principle 2 and the requirements relating to a SB SEF's trading rules).

onerous and thus would make it impractical or economically infeasible for entities that currently trade SB swaps to modify their procedures, personnel, systems or platform in order to operate as a SB SEF. If this is the case, the Commission seeks commenters views on ways that its proposed interpretation of the definition of SB SEF, its proposed rules implementing the Core Principles, or its proposed registration requirements could be modified so that entities that currently trade SB swaps could continue to do so and at the same time the statutory requirements of the Dodd-Frank Act relating to SB SEFs would be met. In particular, the Commission requests comment on the question of whether it should adopt a phased approach to the implementation and/or application of the proposed rules, whereby certain provisions would become operational only when certain designated timing, volume, liquidity, or other thresholds were met.[50] The Commission seeks commenters' views on the steps it could take to facilitate the transition to a more regulatory environment for those entities that currently trade SB swaps and expect to register as SB SEFs.[51]

IV. Exemption From the Definition of Exchange for Security-Based Swap Execution Facilities

An entity that meets the definition of SB SEF in Section 3(a)(77) of the Exchange Act may also meet the definition of "exchange" set forth in Section 3(a)(1) of the Exchange Act,[52] certain of the terms of which have been interpreted by the Commission in Rule 3b–16 of the Exchange Act.[53] The Commission believes that Congress did not intend that entities that meet the definition of SB SEF in Section 3(a)(77) of the Exchange Act and that comply with Section 3D of the Exchange Act and the rules and regulations promulgated by the Commission (including the requirement to register as a SB SEF) also would be subject to various requirements applicable to exchanges, including registration as a national securities exchange.[54]

Section 3(a)(77) of the Exchange Act defines a SB SEF as a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: (1) Facilitates the execution of SB swaps between persons; and (2) *is not a national securities exchange* (emphasis added).[55] Further, Section 3C(h) of the Exchange Act provides that transactions involving SB swaps subject to the clearing requirement be executed on either (1) an exchange or (2) a SB SEF registered under Section 3D of the Exchange Act or exempt from registration (unless no exchange or SB SEF makes the SB swap available to trade or the SB swap transaction is subject to a clearing exception).[56] Finally, Section 3D(a)(1) of the Exchange Act provides that no person may operate a facility for the trading or processing of SB swaps, unless the facility is registered as a SB SEF or as a national securities exchange.[57] The Commission interprets these provisions to mean that an entity that is registered as a SB SEF cannot also be a national securities exchange; that an exchange and a SB SEF registered under Section 3D of the Exchange Act (or exempt from such registration) are separate categories of regulated entities for the trading of SB swaps; and that an entity registered as a SB SEF would not also be required to register as a national securities exchange.

Section 36 of the Exchange Act[58] gives the Commission broad authority to exempt any person, security, or transaction from any provision of the Exchange Act and any rule or regulation thereunder. Such an exemption may be subject to conditions. Using this authority, the Commission is proposing to amend Rule 3a1–1 of the Exchange Act[59] by adding paragraph (a)(4) to exempt any SB SEF from the definition of "exchange," if such SB SEF provides a marketplace solely for the trading of SB swaps (and no other security) and complies with the provisions of proposed Regulation SB SEF.[60] The effect of this exemption would be that an entity that registers as a SB SEF would not also have to register as a national securities exchange.

The Commission preliminarily believes that this proposed exemption is necessary and appropriate in the public interest and is consistent with the protection of investors because it would effectuate the intent of the Dodd-Frank Act, as expressed in Sections 3(a)(77), 3C(h) and 3D(a)(1) of the Exchange Act, and it would eliminate what the Commission believes would be a largely duplicative oversight of SB SEFs. The Commission believes that Congress specifically provided a comprehensive regulatory framework for SB SEFs in the Exchange Act, as amended by the Dodd-Frank Act, and therefore that such entities that are registered as SB SEFs should not also be required to register and be regulated as national securities exchanges. The Commission notes that a registered SB SEF that chose to provide a marketplace for the trading of any security other than a SB swap would not be in compliance with the exemption in proposed Rule 3a1–1(a)(4). Also, as the SB swaps markets continue to evolve, the Commission will continue to assess the appropriateness of, and/or take action with respect to, the proposed exemption from the definition of exchange.

The Commission requests comment on the proposed exemption in Rule 3a1–1(a)(4). Is the exemption necessary or appropriate? Are the conditions to the proposed exemption appropriate or should there be any additional

[50] *See infra* the discussion in Section XXV regarding a phased approach to implementation.

[51] *See infra* Section XXI.A.2 seeking commenters' views on a possible phased-in approach to any rules that the Commission may adopt with respect to SB SEFs.

[52] 15 U.S.C. 78c(a)(1). The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

[53] 17 CFR 240.3b–16 defines the phrase "market place or facilities for bringing together purchasers or sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange" to mean an organization, association or group of persons that (1) brings together the orders for securities of multiple buyers and sellers; and (2) uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of the trade.

[54] *See, e.g.,* Section 6 of the Exchange Act, 15 U.S.C. 78f, which, among other things, requires a national securities exchange to enforce compliance by its members and their associated persons with the Exchange Act and rules and regulations thereunder, as well as with the exchange's rules. National securities exchanges are self-regulatory organizations ("SROs") for purposes of the Exchange Act and are subject to the requirements of Sections 17 and 19 of the Exchange Act, 15 U.S.C. 78q and78s. Section 17(a)(1) requires national securities exchanges to make and keep records for prescribed periods, and to furnish such records to the Commission as well as any related reports. Section 19(b) requires, among other things, SROs to file proposed rule changes with the Commission.

[55] *See* Public Law 111–203, § 761(a) (adding Section 3a(77) of the Exchange Act).

[56] *See* Public Law 111–203, § 763(a) (adding Section 3C(h) of the Exchange Act). The Commission notes that in this section Congress chose to use the term "exchange" as opposed to "national securities exchange." An exchange only becomes a "national securities exchange" upon registration with the Commission pursuant to Section 6 of the Exchange Act.

[57] *See* Public Law 111–203, § 763(c) (adding Section 3D(a)(1) of the Exchange Act).

[58] 15 U.S.C. 78mm.

[59] 17 CFR 240.3a1–1.

[60] *See* proposed Rule 3a1–1(a)(4).

conditions? What are the benefits or drawbacks of the proposed exemption?

The definition of "security-based swap execution facility" and the definition of "exchange" (certain terms of which have been interpreted by Rule 3b–16 under the Exchange Act) are similar in that they both include the concept of multiple participants and multiple buyers and sellers, respectively. However, these definitions are not identical. It is possible that an entity that trades SB swaps would meet the criteria of Rule 3b–16 but not the definition of SB SEF contained in Section 3(a)(77) of the Exchange Act. If such an entity trades SB swaps that are subject to mandatory clearing and that are made available to trade on an exchange or SB SEF, it would be required to register as a national securities exchange, absent a limited volume exemption pursuant to Section 5 of the Exchange Act.[61] Should the Commission permit such a platform to register as a SB SEF pursuant to Section 3D(a)(1) of the Exchange Act?[62] Should the Commission instead provide an exemption from the definition of exchange for such an entity? If so, why, and what should be the conditions to any such exemption? What would be the benefits or drawbacks of any such exemption?

V. Conditional Exemption From Regulation as Brokers for Security-Based Swap Execution Facilities

An entity that meets the definition of "security-based swap execution facility" in Section 3(a)(77) of the Exchange Act also would meet the definition of "broker" set forth in Section 3(a)(4) of the Exchange Act.[63] The term "broker" is generally defined to mean any person engaged in the business of effecting transactions in securities for the account of others.[64] A SB SEF is defined as a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that: (A) Facilitates the execution of SB swaps between persons; and (B) is not a national securities exchange.[65] A SB SEF, by facilitating the execution of SB swaps between persons, also would be engaged in the business of effecting transactions in securities for the account of others and therefore would meet the statutory definition of "broker." Absent an exception or exemption, a SB SEF that effects transactions in SB swaps would be required to register as a broker pursuant to Sections 15(a)(1) and (b) of the Exchange Act[66] and to comply with the reporting and other requirements applicable to brokers under the Exchange Act and rules and regulations thereunder.

As the Commission noted in its discussion regarding the exemption from the definition of "exchange" for SB SEFs, the Exchange Act, as amended by the Dodd-Frank Act, sets forth a comprehensive regulatory framework for SB SEFs. The Commission believes that this framework indicates that Congress did not intend for entities that meet the definition of SB SEF in Section 3(a)(77) of the Exchange Act and that comply with Section 3D of the Exchange Act and the rules and regulations thereunder (including the registration as a SB SEF) also to be subject to all of the requirements set forth in the Exchange Act and the rules and regulations thereunder applicable to brokers.[67] As discussed above, the Exchange Act, as amended, establishes the statutory structure for SB SEFs to register with the Commission and for the Commission to adopt rules and regulations that require these entities to comply with the Core Principles and enforce compliance with those Core Principles and any rules or regulations that the Commission may adopt.

Section 36 of the Exchange Act gives the Commission broad authority to exempt any person, security, or transaction from provisions of the Exchange Act and the rules thereunder.[68] Such an exemption may be subject to conditions.[69] Using this authority, as well as its authority to establish procedures regarding the registration of brokers, the Commission is proposing Rule 15a–12 under the Exchange Act to allow a SB SEF that is a broker solely due to its activity with respect to SB swaps executed on or through the SB SEF to satisfy the requirement to register as a broker by registering as a SB SEF. Such person, however, must not engage in any activity that would require registration as a broker other than facilitating the trading of SB swaps on or through the SB SEF in a manner consistent with Regulation SB SEF. For example, acting as an agent to a counterparty to a SB swap trade or acting in a discretionary manner with respect to the execution of a SB swap trade would indicate that such person may be acting as a broker and, if the person is acting as a broker, it would be required to register as such, unless an exemption or exception from registration was available. If an entity, such as an inter-dealer broker, for example, elects not to separate its inter-

[61] The trading of a SB swap on an ATS when that SB swap is subject to mandatory clearing and is made available to trade on a SB SEF or a national securities exchange would not satisfy the requirement of Section 3C(h) of the Exchange Act. Section 3C(h) of the Exchange Act states that, with respect to transactions involving SB swaps subject to the clearing requirement of subsection (a)(1) of Section 3C of the Exchange Act, the counterparties shall (A) execute the transaction on an exchange; or (B) execute the transaction on a SB SEF registered under Section 3D of the Exchange Act or a SB SEF that is exempt from registration under section 3D(e) of the Exchange Act. Although, as noted above, Section 3C(h) uses the term "exchange" as opposed to "national securities exchange," an ATS would not satisfy this requirement because an ATS is exempt from the definition of exchange pursuant to Rule 3a1–1 under the Exchange Act.

[62] Section 3D(a)(1) of the Exchange Act states that "no person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section." Section 3(a)(77) of the Exchange Act defines "security-based swap execution facility" to mean a trading system or platform in which multiple participants have the ability to execute or trade SB swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that (A) facilitates the execution of SB swaps between persons; and (B) is not a national securities exchange. The Commission interprets these two provisions, taken together, to require registration as a SB SEF or a national securities exchange for any entity that meets the definition of SB SEF in Section 3(a)(77) of the Exchange Act.

[63] 15 U.S.C. 78c(a)(4).

[64] *Id.* The term "security" in Section 3(a)(10) of the Exchange Act includes a "security-based swap." *See* 15 U.S.C. 78c(a)(10).

[65] *See* Public Law 111–203, § 761(a) (adding Section 3(a)(77) of the Exchange Act).

[66] 15 U.S.C. 78o(a)(1) and (b). Section 15(a)(1) generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission. Section 15(b) generally provides the manner of registration of brokers and dealers and other requirements applicable to registered brokers and dealers.

[67] Brokers and dealers must comply with the Exchange Act provisions and rules and regulations thereunder applicable to them. *See, e.g.,* Section 15 of the Exchange Act, 15 U.S.C. 78o, and rules and regulations thereunder. For example, brokers and dealers must comply with a number of regulations that govern their conduct, such as rules relating to customer confirmations and disclosure of credit terms in margin transactions. *See* 17 CFR 240.10b–10 and 17 CFR 240.10b–16. They also must comply with a number of financial responsibility regulations, such as the net capital and customer protection rules. *See* 17 CFR 240.15c3–1 and 17 CFR 240.15c3–3. Among other things, registered brokers and dealers also must make and keep current books and records relating to their business and detailing, among other things, securities transactions, money balances, and securities positions; keep records for required periods and furnish copies of those records to the Commission on request; and file certain financial reports with the Commission. *See* 17 CFR 240.17a–3, 17 CFR 240.17a–4, and 17 CFR 240.17a–5.

[68] 15 U.S.C. 78mm.

[69] *See id.*

dealer broker from its SB SEF or create a subsidiary for its SB SEF, and instead chooses to operate the SB SEF as the same entity as the broker, the inter-dealer broker would not qualify for the exemption.

In addition, the Commission is proposing to conditionally exempt any SB SEF from the Exchange Act and the rules and regulations thereunder applicable to brokers, except Exchange Act Sections 15(b)(4), 15(b)(6), and 17(b).[70] Under the proposed Rule, three key provisions of the Exchange Act that serve as the basis for Commission examination and enforcement of the Federal securities laws with respect to a registered broker would continue to apply to a SB SEF that relies on the exemption in proposed Rule 15a–12. Section 17(b) of the Exchange Act[71] authorizes the Commission to conduct reasonable periodic, special, or other examinations, of "[a]ll records" maintained by entities described in Section 17(a),[72] including registered brokers.[73] These examinations may be conducted "at any time, or from time to time," as the Commission "deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of [the Exchange Act]."[74] Proposed Rule 15a–12 also would not exempt a broker that registers as a SB SEF from the statutory disqualification provisions in Sections 15(b)(4) and (6) of the Exchange Act, both with respect to itself and with respect to its associated persons.[75] Further, pursuant to proposed Rule 15a–12(d), a broker registered under Section 15a–12(a) of the Exchange Act that does not engage in any activity other than the facilitating and trading of SB swaps on or through the SB SEF in a manner consistent with Regulation SB SEF would be exempt from the Securities Investor Protection Act ("SIPA"), including membership in the Securities Investor Protection Corporation.[76]

The Commission believes that the exemption in proposed Rule 15a–12 under the Exchange Act is necessary and appropriate in the public interest and consistent with the protection of investors because it would eliminate what the Commission believes would be unnecessary additional regulation of SB SEFs. Because SB SEFs would be required to register as such under Section 3D of the Exchange Act, it would be unnecessary for them also to be subject to statutory and regulatory provisions governing brokers, subject to certain exceptions set forth in the proposed rule. The Commission believes that Congress specifically provided a comprehensive regulatory framework for SB SEFs in the Exchange Act, as amended by the Dodd-Frank Act, and therefore that such entities generally should not also be regulated as brokers where such regulation would be duplicative and unnecessary. As such, the Commission preliminarily believes that the broker registration and oversight process can be accomplished largely through the entity's registration as a SB SEF. In this regard, the Commission also believes that it would be unnecessary and inconsistent with the comprehensive regulatory framework for SB SEFs to require a SB SEF, which would not be a custodian of customer funds or securities and would not otherwise operate as a broker, to comply with SIPA. SIPA is a comprehensive regulatory scheme for the orderly liquidation of failed broker-dealers and the return of customer property. If additional regulation is developed for brokers, any application of such regulation to SB SEFs would be proposed by rule. Any order, such as a suspension of the registration or trading of a security pursuant to Sections 12(j) or 12(k) of the Exchange Act,[77] if applicable to a SB SEF, would specify that it would be applicable to a SB SEF.

The Commission notes that it is not exempting SB SEFs from registration as brokers; rather, it is proposing to eliminate an additive layer of regulation that the Commission believes is not necessary in light of its regulatory oversight of SB SEFs. The Commission does not believe, however, that it would be in the public interest to exempt SB SEFs from the examination requirements of Section 17(b) of the Exchange Act, the statutory disqualification provisions of Sections 15(b)(4) and (6) of the Exchange Act.

The Commission requests comment on all aspects of its proposed rule. Specifically, the Commission requests comment on the scope, form, and conditions of the proposed exemption. Is the exemption necessary? Should the Commission add additional conditions to its exemption, including requiring compliance with any other statutory provisions or any other rules or regulations applicable to brokers? If so, which ones, and why? Should the Commission exempt SB SEFs from the provisions of SIPA? If not, why not?

The Commission seeks comment on whether there is a need for SB SEFs to become members of a national securities association. Would it be beneficial to require SB SEFs to become members of a national securities association to provide an additional level of regulatory oversight in addition to oversight by the Commission? Why or why not? Should the proposed exemption include a condition requiring SB SEFs to comply with Section 15(b)(8) under the Exchange Act,[78] which requires a registered broker to be a member of a registered national securities association unless such broker effects transactions solely on a national securities exchange of which it is a member? What would be the advantages or disadvantages of such membership?

As noted above, the proposed Rule would not apply in those instances when the SB SEF is engaging in activity that is not solely related to the execution of SB swaps on or through the facility, *e.g.,* when the broker provides services such as acting as an agent to a counterparty to an SB swap trade or acts in a discretionary manner with respect to the execution of SB swap trades. In such instances, should the broker be required to comply with all Exchange Act and Commission requirements relating to brokers? If so, how would the broker be able to separate its brokerage function from its activities as a SB SEF? What potential conflict concerns would be raised, if any, if an entity that was engaged in brokerage activity in SB swaps on a SB SEF were affiliated with that SB SEF, or if an entity were engaging in brokerage activity in SB swaps on a SB SEF in the same legal entity that operates the SB SEF? If commenters believe that such activity would raise concerns, should the Commission require the entity's brokerage activities and its SB SEF activities to be conducted on separate legal entities? Or, should the Commission impose requirements on the ability of a broker to be affiliated with a SB SEF? If so, what conditions should the Commission impose, and how would they address any potential conflict concerns?

Are there any potential conflict concerns raised if a wholesale broker is affiliated with a SB SEF, or is operating

[70] *See* proposed Rule 15a–12(c).

[71] 15 U.S.C. 78q(b). *See also* 15 U.S.C. 78m(h)(4).

[72] 15 U.S.C. 78q(a).

[73] 15 U.S.C. 78q(b).

[74] *Id.*

[75] 15 U.S.C. 78o(b)(4) and (6). *See also* 15 U.S.C. 78c(a)(18) (defining "person associated with a broker or dealer" or "associated person of a broker or dealer").

[76] Section 36 of the Exchange Act gives the Commission broad authority to exempt any person, security, or transaction from any of the provisions of the Exchange Act. This authority would include the ability of the Commission to grant an exemption under Section 36 from certain requirements of SIPA. *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59366, n. 31 (November 3, 1998).

[77] 15 U.S.C. 78*l*(j) and (k).

[78] 15 U.S.C. 78o(b)(8).

in the same legal entity as a SB SEF? If so, what are those concerns, and what are commenters views on whether and how such concerns should be addressed?

What would be the effect of having SB SEFs join a registered securities association without having a comparable SRO for security-based swap dealers ("SB swap dealers") or major security-based swap participants ("major SB swap participants")? Because SB SEFs would be subject to regulatory obligations, should the Commission provide guidance on the acceptable scope of any outsourcing of regulatory matters that the SB SEF could undertake?

VI. Access to Security-Based Swap Execution Facilities

The Dodd-Frank Act does not define the categories of market participants that may have access to trading on a registered SB SEF or the terms of such access. For the purposes of providing guidance on this issue and to ensure that SB SEFs grant access to their markets in a manner that is consistent with the Core Principles in Section 3D of the Exchange Act, the Commission is proposing Rule 809 and 811(b). Proposed Rule 809 would set forth the categories of persons that would be permitted to have direct access to trading on a registered SB SEF as a participant and also the terms and conditions that the SB SEF would need to adopt for granting such access.[79] Proposed Rule 811(b) would elaborate on the standards for providing impartial access.[80] The purpose of the proposed rules is to ensure that access to SB SEFs is granted in a manner that strikes an appropriate balance between the statutory requirements of impartial access (Core Principle 2) and financial integrity of transactions (Core Principle 6) for SB SEFs.

The Commission understands that, currently, trades in SB swaps occur among dealers on OTC inter-dealer markets, and between dealers and end-user customers on single- or multi-dealer OTC dealer-to-customer markets or through bilateral negotiations. In addition, trading of SB swaps in these OTC markets is dominated by a small number of large swap dealers.[81] When a small group of market participants dominates much of the trading in SB swaps, and exerts control over access to the SB swaps market, it raises concerns about open access and competition. If SB SEFs are controlled by a small group of dealers who also dominate trading in the market for SB swaps, the dealers may have economic incentives to exert undue influence to restrict the level of access to SB SEFs and thus impede competition by other market participants in order to increase their ability to maintain higher profit margins.[82] At the same time, in the absence of clearing or other financial safeguards, counterparties assess the degree of credit risk posed by each other, and enter into SB swap transactions only with other persons deemed to have an acceptable level of credit risk. Therefore, in the OTC market for SB swaps, open access and containing counterparty credit risk may be viewed as competing and potentially conflicting goals.

The Dodd-Frank Act addresses these competing concerns in several ways. Section 3C(a)(1) of the Exchange Act requires the mandatory clearing of SB swaps that the Commission determines must be cleared.[83] With respect to trading on SB SEFs, the Dodd-Frank Act requires SB SEFs to establish rules for both impartial access to their markets and the financial integrity of transactions on their markets, including with respect to clearance and settlement. Specifically, Core Principle 2 requires SB SEFs to provide market participants with impartial access to the market.[84] Under Core Principle 6, SB SEFs are required to establish and enforce rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of the SB SEF, including the clearance and settlement of SB swaps pursuant to Section 3C(a)(1) of the Exchange Act.[85] The Commission does not believe that the requirement for impartial access to a SB SEF under Core Principle 2 means that it must allow unfettered access to any and all persons. Rather, the requirements of Core Principle 6 that SB SEFs ensure the financial integrity of transactions on their markets, particularly with respect to the mandatory clearing requirement, permit SB SEF to have minimum standards for access to their markets, though such access must be provided on an impartial basis.

In recognition of the challenges in striking the balance between impartial access and financial integrity goals of the Dodd-Frank Act, and in view of the current dominance of trading in SB swaps in the OTC market by a small number of dealers, the Commission is proposing Rule 809 and Rule 811(b) to establish certain baseline principles for granting access to SB SEFs in compliance with the requirements of both Core Principles 2 and 6. Specifically, proposed Rule 809(a) through (c) and proposed Rule 811(b) would require that SB SEFs enact and apply objective standards for access to their markets, in compliance with the impartial access requirement of Core Principle 2. Proposed Rule 809(a) and (c)(1) through (4) would establish certain minimum, objective standards for SB SEF participants, in compliance with the financial integrity of transactions requirements of Core Principle 6.

A. Impartial Access

Proposed Rule 809(a) would provide that only registered SB swap dealers, major SB swap participants, or brokers (as defined in section 3(a)(4) of the Exchange Act), or eligible contract participants[86] would be eligible to

[79] *See* proposed Rule 809.

[80] *See* proposed Rule 811(b).

[81] *See* Office of the Comptroller of the Currency ("OCC"), Quarterly Report on Bank Trading and Derivatives Activities, First Quarter 2010 ("Derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Five large commercial banks represent 97% of the total banking industry notional amounts * * *."). Several commenters on proposed Regulation MC, however, took issue with this statistic because the OCC data included information about U.S. dealers only. *See, e.g.,* Letter from Barry L. Zubrow, Executive Vice President & Chief Risk Officer, JP Morgan Chase & Co., to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated November 17, 2010.

[82] In addition, these market participants might be motivated to restrict the scope of SB swaps that are made available for trading at SB SEFs if there is a strong economic incentive to keep such SB swaps in the OTC market. Conflicts of interest concerns relating to SB SEFs are discussed in greater depth in the release proposing Regulation MC, which recently was published by the Commission as part of a rulemaking mandated by Section 765 of the Dodd-Frank Act. *See* Securities Exchange Act Release No. 63107 (October 14, 2010), 75 FR 65882 (October 26, 2010) ("Regulation MC Proposing Release"). Section 765 of the Dodd-Frank Act requires the Commission to adopt rules to mitigate specified conflicts of interest relating to SB SEFs, security-based swap clearing agencies, and SBS exchanges.

[83] *See* Public Law 111–203, § 763(a) (adding Section 3C(a)(1) of the Exchange Act). Section 3C(a)(1) makes it unlawful for a person to engage in a SB swap unless the SB swap is submitted for clearing to a registered clearing agency, if the SB swap is required to be cleared.

[84] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2) of the Exchange Act).

[85] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(6) of the Exchange Act). Section 3C(a)(1) makes it unlawful for a person to engage in a SB swap unless the SB swap is submitted for clearing to a registered clearing agency, if the SB swap is required to be cleared. *See* Public Law 111–203, § 763(a) (adding Section 3C(a)(1) of the Exchange Act).

[86] The term "eligible contract participant" is defined in Section 3(a)(65) of the Exchange Act as having the same meaning as in Section 1a of the CEA (7 U.S.C. 1a). As discussed above, this term

Continued

become participants in a SB SEF. Proposed Rule 809(b) would require a SB SEF to permit all eligible persons that meet the requirements for becoming a participant under Rule 809(a) and the SB SEF's rules to become participants in the SB SEF, consistent with the requirements for impartial access in Core Principle 2 and proposed Rule 811(b).[87] Proposed Rule 809(b) would, however, permit a SB SEF to choose to not permit any eligible contract participants that are not registered with the Commission as a SB swap dealer, major SB swap participant, or broker (as defined in section 3(a)(4) of the Act[88]) ("non-registered ECP"), to become participants in the SB SEF. Thus, under the proposed rule, while a SB SEF could choose to not allow any non-registered ECPs to become participants, if the SB SEF chose to permit such non-registered ECPs to become participants in the SB SEF, it could not selectively prohibit certain non-registered ECPs from becoming participants if they otherwise satisfied the SB SEF's requirements. In effect, proposed Rule 809(b) would limit the discretion involved in admitting participants to a SB SEF because it would impose an affirmative requirement on SB SEFs to grant qualified persons access to their markets as participants.[89]

Proposed Rule 809(c) would require a SB SEF to establish rules setting forth requirements for eligible persons to become participants in the SB SEF consistent with the SB SEF's obligations under the Exchange Act and the rules thereunder, and includes certain enumerated minimum standards.[90] Proposed Rule 809(c), by requiring a SB SEF to codify its standards for becoming a participant in its market, would make the process of admitting participants transparent and rules-based, and thereby more objective. In addition, such rules would have to be consistent with proposed Rule 811(b), which would require every SB SEF to establish fair, objective, and not unreasonably discriminatory standards for granting impartial access to trading on the facility.[91] Proposed Rule 811(b) would require that a SB SEF may not unreasonably prohibit or limit any person with respect to access to the services offered by the SB SEF by applying those standards in an unfair or unreasonably discriminatory manner.[92] Proposed Rule 811(b)(3) also would require every SB SEF to make and keep records of all grants, denials, or limitations of access and to report that information on proposed Form SB SEF[93] and in the annual compliance report of the Chief Compliance Officer ("CCO") pursuant to proposed Rule 823(c).

As was the case when the Commission adopted Regulation ATS,[94] these provisions are based on the principle that qualified market participants should have fair access to the nation's securities markets. Under the proposal, a SB SEF would have flexibility in establishing standards for impartial access so long as those standards are fair and objective and do not unreasonably discriminate, and the SB SEF does not apply the standards in an unfair or unreasonably discriminatory manner. For example, a SB SEF could establish objective minimum capital or credit requirements for participants, as long as they were not designed to, and did not have the effect of, unreasonably discriminating among persons seeking access to the SB SEF.[95] Similarly, a SB SEF could reasonably deny access to participants based on an unfavorable disciplinary history. Provided that these or other standards are objective and applied consistently to all potential participants, a SB SEF could be considered to be granting or denying access fairly. A denial of access might be unreasonable, however, if it were based solely, for example, on the business activities of a prospective participant that are unrelated to trading on the SB SEF.[96]

The Commission believes that impartial access to SB SEFs would work in conjunction with rules proposed by the Commission to mitigate conflicts of interest that could arise when a small number of market participants, including their related persons, exercise control or undue influence over a SB SEF either through ownership of voting interests or participation in the governance of the SB SEF.[97] The Commission requests comment, however, on the extent to which both types of rules are necessary to ensure fair access to SB SEFs.

B. Financial Integrity

As noted above, proposed Rule 809(a) would permit only persons that are registered with the Commission as SB swap dealers, major SB swap participants, or brokers, or persons that are eligible contract participants (as defined in section 3(a)(65) of the Act) to become participants of a SB SEF.[98] Permitting registered SB swap dealers, major SB swap participants, and brokers to become participants would support the SB SEF's duty to ensure the financial integrity of transactions, including the clearance and settlement of SB swaps, under Core Principle 6.[99] Registered SB swap dealers, major SB swap participants, and brokers are all subject to, or would be subject to, minimum financial responsibility requirements (including margin and net capital requirements) and business conduct requirements as a result of their registered status under the Exchange Act, which the Commission believes would serve as a useful baseline for ensuring the financial integrity of their transactions entered on SB SEFs.[100]

may be further defined by the Commission and the CFTC pursuant to various sections of the Dodd-Frank Act. *See supra* note 3.

[87] Core Principle 2 requires a SB SEF to establish and enforce compliance with rules relating to any limitation on access to the facility and to provide market participants with impartial access to the market. *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2) of the Exchange Act).

[88] 15 U.S.C. 78c(a)(4).

[89] This proposed requirement is analogous to the fair access requirement for national securities exchanges under Section 6(b)(2) of the Exchange Act, which also imposes an affirmative duty to admit qualified broker-dealers as members. *See* 15 U.S.C. 78f(b)(2). "The rules of the exchange [must] provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange * * *."

[90] *See* proposed Rule 809(c)(1)–(4) and *infra* notes 105–109 and accompanying text for a discussion of those proposed provisions.

[91] *See* proposed Rule 811(b)(1).

[92] *See* proposed Rule 811(b)(2).

[93] The Commission is proposing that SB SEFs register on Form SB SEF. *See infra* Section XXII for a discussion of proposed Form SB SEF.

[94] 17 CFR 242.300 *et seq. See* Securities Exchange Act Release No. 40760, (December 8, 1998), 63 FR 70844 ("ATS Adopting Release") at notes 245 to 256.

[95] *See infra* Section XII for a discussion of the ability of a SB SEF to impose higher capital requirements.

[96] The Commission also discussed fair access at length in the ATS Adopting Release. *See supra* note 94 at note 245.

[97] *See* Regulation MC Proposing Release, *supra* note 82.

[98] *See* proposed Rule 809(a). The term "participant," when used with respect to a SB SEF, would mean a person that is permitted to directly effect transactions on the SB SEF. *See* proposed Rule 800.

[99] Core Principle 6 requires SB SEFs to establish and enforce rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of the SB SEF, including the clearance and settlement of SB swaps pursuant to Section 3C(a)(1) of the Exchange Act. *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(6) of the Exchange Act).

[100] The Exchange Act requires registered SB swap dealers and major SB swap participants to comply with certain minimum financial responsibility and business conduct requirements. *See* Public Law 111–203, § 764(a) (adding Sections 15F(e) and (h) of the Exchange Act). The financial responsibility and business conduct requirements applicable to registered SB swap dealers and major SB swap participants will be the subject of a separate rulemaking. Likewise, the Exchange Act requires registered brokers to comply with certain financial responsibility and business conduct obligations under Section 15(c) of the Exchange Act and the rules and regulations thereunder. *See* 15 U.S.C.

Moreover, the Commission notes that these registered persons are subject to Commission oversight for compliance with those requirements.[101]

At the same time, proposed Rule 809(a) also would permit a SB SEF to choose to allow non-registered ECPs to become participants in the SB SEF. If a SB SEF chooses to permit non-registered ECPs to become participants, the SB SEF would be responsible for establishing risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks associated with the eligible contract participants' access under proposed Rule 809(d).

Proposed Rule 809(d) would require SB SEFs that provide direct access to non-registered ECPs as participants to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of direct access by eligible contract participants.[102] The SB SEF'S risk management controls and supervisory procedures for granting access to non-registered ECPs would be required to be reasonably designed to ensure compliance with all regulatory requirements. The proposed requirements for SB SEFs in proposed Rule 809(d) are based on similar requirements in Rule 15c3–5(b) and (c)(2) under the Exchange Act for ATSs that provide access to their markets to non-broker-dealers.[103]

Allowing eligible contract participants to be direct participants in a SB SEF would be consistent with the way the OTC SB swaps market operates today. The Commission preliminarily believes that it is reasonable and appropriate to require the SB SEF that provides direct access to non-registered ECPs to undertake certain responsibilities to manage the risk of those market participants accessing their market. This proposed requirement would support the SB SEF's compliance with the financial integrity of transaction requirement of Core Principle 6. Participants that are SB swap dealers, major SB swap participants, and brokers that are participants of the SB SEFs would be required to be registered with the Commission and be subject to certain margin, net capital, and other financial requirements that, by virtue of their registration, are designed to curtail the market risk imposed by their trading activities. In contrast, non-registered ECPs would not have corresponding requirements under the Exchange Act. The proposed requirements of Rule 809(d) are designed to reduce the risks associated with non-registered ECPs that have direct access to SB SEFs by requiring SB SEFs that choose to allow non-registered ECPs to be participants to establish, document and maintain risk management controls and supervisory procedures. Since non-registered ECPs are not subject to capital and other financial requirements, there is a concern that, in the absence of requiring risk management controls and supervisory procedures, they could enter into trades that exceed appropriate credit or capital limits for their risk capacity. The Commission preliminarily believes that the SB SEF is best positioned to implement the proposed controls and procedures.

The Commission preliminarily believes that proposed Rules 809(a) and (d) would ensure that access to SB SEFs is sufficiently broad, while at the same time imposing certain thresholds and conditions for such access to ensure the financial integrity of transactions on the SB SEF. The Commission preliminarily believes that the proposed limit on eligible persons that may become participants in SB SEFs under proposed Rule 809(a) should not have the effect of preventing interested market participants from trading SB swaps. The Commission notes, for example, that many dealers would likely meet the definition of SB swap dealer, and thereby would be able to have direct access to trading SB swaps on SB SEFs once they are registered. Many other market participants would qualify for direct access by meeting the definition of "eligible contract participant" in Section 3(a)(65) of the Act. The Commission notes that, although SB SEFs are not required to provide access to their markets to non-registered ECPs as participants, if a SB SEF should provide access to non-registered ECPs to its markets as participants, it would be required to provide such access impartially consistent with proposed Rule 811(b). In addition, the Commission notes that eligible contract participants that are not participants could access a SB SEF indirectly through a participant.[104] Therefore, the Commission preliminarily believes that proposed Rule 809(a) would not have an adverse effect on access to trading SB swaps on a SB SEF.

To help ensure that access to SB SEFs is granted in a manner that would enable the SB SEF to carry out its responsibilities under Core Principle 6, proposed Rule 809(c)(1) and (2) also would require SB SEFs to have rules to require a participant to, at a minimum: (1) Be a member of, or have an arrangement with a member of, a registered clearing agency to clear trades in SB swaps that are subject to mandatory clearing pursuant to Section 3C(a)(1) of the Act and entered into by the participant on the SB SEF; and (2)(i) to meet the minimum financial responsibility requirements[105] and recordkeeping and reporting requirements[106] imposed by the Commission by virtue of its registration as a SB swap dealer, major SB swap participant, or broker, or (ii) in the case of an eligible contract participant, meet the recordkeeping and reporting requirements that the SB SEF shall establish pursuant to proposed Rule 813.

Requiring SB SEFs to put in place rules that require its participants to be a clearing member of, or have arrangements with a clearing member of, a registered clearing agency to clear trades in SB swaps that are subject to mandatory clearing and entered by the participant and, in the case of registered

78o(c), and Rules 15c1–2, 15c1–3, 15c2–1, 15c2–5, and 15c3–1 under the Exchange Act, 17 CFR 240.15c1–2, 15c1–3, 15c2–1, 15c2–5, and 15c3–1.

[101] The Commission's regulatory and oversight authority includes and would include requirements to keep books and records open to the inspection and examination authority of the Commission. *See* Section 15F(f) of the Exchange Act, Public Law 111–203, § 764 (adding Section 15F(f) of the Exchange Act) and Section 17(b) of the Exchange Act, 15 U.S.C. 78q(b).

[102] *See* proposed Rule 809(d)(1).

[103] *See* 17 CFR 240.15c3–5(c).

[104] Under the Dodd-Frank Act, transactions in SB swaps with a market participant that is not an eligible contract participant must be effected on a national securities exchange registered under Section 6(b) of the Exchange Act. *See* Public Law 111–203, § 763(e) (adding Section 6(l) of the Exchange Act). In addition, the offer and sale of SB swaps to market participants that are not eligible contract participants would have to be pursuant to an effective registration statement under Section 6 of the Securities Act of 1933. *See* 15 U.S.C. 77f.

[105] *See* Public Law 111–203, § 764(a) (adding Sections 15F(e) of the Exchange Act) and Section 15(c) of the Exchange Act, 15 U.S.C. 78o(c). For registered brokers, *see also* Rule 15c3–1 under the Exchange Act. The financial responsibility requirements applicable to registered SB swap dealers and major SB swap participants will be the subject of a separate rulemaking.

[106] The Exchange Act requires registered SB swap dealers and major SB swap participants to keep books and records of activities related to their business and provide certain reports of those activities. *See* Public Law 111–203, § 764(a) (adding Section 15F(f) of the Exchange Act). The rules relating to the recordkeeping and reporting requirements of these entities will be the subject of a separate Commission rulemaking. Likewise, the Exchange Act and rules and regulations thereunder require registered brokers to keep books and records of activities related to their business and provide certain reports of those activities. *See* Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a), and *see, e.g.,* Rules 17a–3 through 17a–5 under the Exchange Act, 17 CFR 240.17a–3 through 240.17a–5.

SB swap dealers, major SB swap participants, or brokers, to meet the minimum financial responsibility requirements imposed by the Commission should strengthen the financial integrity of SB swap transactions that occur on the SB SEFs by reducing the counterparty credit risks associated with SB swap transactions, consistent with Core Principle 6.[107] Furthermore, the requirement for participants to meet the minimum recordkeeping and reporting requirements imposed by the Commission by virtue of their registration or, in the case of non-registered ECPs, those requirements imposed by the SB SEF, would enable a SB SEF to obtain the necessary information to perform their functions under Section 3D of the Exchange Act, consistent with Core Principle 5, and to enforce its rules and procedures for ensuring the financial integrity of SB swaps entered on the SB SEF, consistent with Core Principle 6.[108] The recordkeeping and reporting requirements also should foster a SB SEF's ability to comply with its obligations to capture information that may be used in establishing whether rule violations have occurred under Core Principle 2 and to monitor trading in SB swaps under Core Principle 4.[109]

Proposed Rules 809(c)(3) and (4) would require SB SEFs to have rules to require a participant to, at a minimum: (1) Agree to comply with the rules, policies, and procedures of the SB SEF, and (2) consent to disciplinary procedures of the SB SEF for violations of its rules. The Commission notes that the cooperation of participants is critical to the SB SEF's ability to comply with several Core Principles in Section 3D of the Exchange Act, particularly Core Principles 2 (Compliance with Rules), 4 (Monitoring of Trading and Trade Processing), and 6 (Financial Integrity of Transactions). For this reason, the Commission believes that it is important for SB SEFs to have rules conditioning access to their markets on a participant's compliance with the SB SEF's rules and its consent to the disciplinary procedures of the SB SEF.

The Commission requests comments on all aspects of the proposed rules relating to access on SB SEFs. The Commission also requests comments on whether proposed Rule 809 incorporates the appropriate categories of persons to be allowed direct access to SB SEFs. If not, how should the categories of such persons be altered? Should certain proposed participants be excluded from having direct access to a SB SEF? If so, which ones and why? Should other categories of persons also be allowed to have direct access to a SB SEF? If so, which ones, and why? Are there any concerns with allowing non-regulated entities to directly access a SB SEF? What would be the benefits of allowing such access? The Commission understands that it is the current practice for customers to engage in transactions with dealers without intermediation. How would the requirements of proposed Rule 809 affect that practice? Please describe any such effects. What would be the result of the proposed rule?

What are the benefits and drawbacks of the proposal for SB SEFs to provide direct access to all persons that meet the requirements for becoming a participant in their rules? Are there other alternatives that the Commission should consider to achieve the goal of having impartial access to SB SEFs, consistent with Core Principle 2? If so, please explain.

Proposed Rule 809(b) would allow a SB SEF to choose not to permit non-registered ECPs to become participants. How, if at all, would this proposed provision affect access to SB SEFs? Should the Commission allow SB SEFs to have the discretion to choose whether or not to permit non-registered ECPs to become participants? Or should the Commission mandate whether or not to require SB SEFs to allow non-registered ECPs to become participants? If the latter, should the Commission require SB SEFs to allow, or prohibit, non-registered ECPs from becoming participants? What would be the effect on access of a mandate for either option? Are SB SEFs that are capable of establishing the risk management controls and supervisory procedures required in proposed Rule 809(d) likely to exclude non-registered ECPs from becoming participants to reduce competition on their markets? Would having the flexibility to exclude non-registered ECPs from becoming participants advance the market entry of smaller SB SEFs that do not have the resources to comply with proposed Rule 809(d),[110] thus increasing opportunities for competition across SB SEFs?

Are the proposed minimum standards for participants of a SB SEF, as set forth in proposed Rule 809(c), necessary and appropriate? If not, why not? Do the qualifications for being a participant in proposed Rule 809(c)(1) and (2) adequately address the financial integrity requirements of Core Principle 6? Do the requirements of proposed Rule 809(c)(2) also foster the ability of SB SEFs to comply with their obligations under Core Principles 2, 4, and 5? What other qualifications should participants in a SB SEF be required to meet as a threshold matter? Are there other minimum standards that the Commission should consider requiring?

Are the requirements in proposed Rule 809(d) pertaining to risk management controls and supervisory procedures for SB SEFs that provide direct access to non-registered ECPs necessary or appropriate? If so, why? If not, why not and what would be a better alternative for addressing risks, if any, associated with providing access to non-registered ECPs?

The Commission recently adopted new Rule 15c3–5 to require broker-dealers to have certain risk management controls for direct and indirect access to trading on national securities exchanges and ATSs.[111] Specifically, Rule 15c3–5 imposes requirements on broker-dealers that have direct access to trading on national securities exchanges and ATSs and to broker-dealer operators of ATSs that provide direct access to non-broker-dealers. Proposed Rule 809(d) would incorporate a requirement to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of their business activity that is generally based upon the requirements of Rule 15c3–5(b) and (c)(2) as they apply to ATSs. However, proposed Rule 809 would not prescribe the specific components for the required risk management controls and supervisory procedures that are contained in Rule 15c3–5(c) or the other requirements in Rule 15c3–5(d) and (e). Should proposed Rule 809(d) provide more specific requirements as to the risk management controls and supervisory procedures that should apply to SB SEFs that provide access to non-registered ECPs as participants? If so, would some or all of the requirements of Rule 15c3–5(c) be appropriate for SB

[107] *See supra* note 99.

[108] *See* Public Law 111–203, § 763(c) (adding Sections 3D(d)(5) and (6) of the Exchange Act).

[109] *See* Public Law 111–203, § 763(c) (adding Sections 3D(d)(2)(B)(ii) and 3D(d)(4)(B).

[110] Proposed Rule 809(d) would require a SB SEF that choose to permit non-registered ECPs to have access as participants to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity and to ensure compliance with all regulatory requirements.

[111] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2011) (File No. S7–03–10) (adopting release for Rule 15c3–5, which governs the terms for sponsored access or direct access on national securities exchanges and alternative trading systems).

SEFs? [112] Please specify and explain why. If not, why not and what would be a better alternative for SB SEFs in this context? Would the remaining requirements of Rule 15c3–5, in paragraphs (d) and (e), be appropriate to apply to SB SEFs that provide access to non-registered ECPs as participants? [113] At this time, the Commission is not proposing to adopt rules relating to direct or indirect access to SB SEFs for SB swap dealers, major SB swap participants, or brokers.[114] Should the Commission adopt rules for risk management controls and supervisory procedures for SB swap dealers, major SB swap participants, brokers and any other participant with direct access to trading or that may provide indirect access to trading, on a SB SEF as a participant? If so, would the terms of Rule 15c3–5 be an appropriate guideline for such rules? Please explain why or why not. If so, should the Commission apply some or all of the requirements of Rule 15c3–5 to SB swap dealers, major SB swap participants, and brokers that are participants in a SB SEF? If only some of the requirements of Rule 15c3–5 should apply, which ones should apply and why? Should the Commission apply requirements similar to those in Rule 15c3–5 only when SB swap dealers, major SB swap participants, and brokers that are participants in a SB SEF provide indirect access to the SB SEF to non-participants? Or, should the risk management controls and procedures required in Rule 15c3–5 also apply to their own transactions as participants of a SB SEF (as they do for the broker-dealers with direct access under Rule 15c3–5)? Why or why not? Or, are the terms of Rule 15c3–5 inappropriate for SB swap dealers, major SB swap participants, brokers, or other persons that are participants of a SB SEF? If so, why and what terms would be a better alternative to address the risks associated with direct access or sponsored access to SB SEFs? What other terms and conditions should the Commission consider to mitigate the risks associated with access to SB SEFs?

What would be the likely impact of having a rule like Rule 15c3–5 apply to SB swap dealers, major SB swap participants, and brokers that are participants in SB SEFs? How would current practices for trading SB swaps be affected by applying a rule like Rule 15c3–5 to participants in SB SEFs? How might the evolution of the SB swaps market over time be affected by such a rule? Would it promote or impede the establishment of SB SEFs?

VII. Core Principle 1—Compliance With Core Principles

Section 3D(d)(1) of the Exchange Act (Core Principle 1) requires a SB SEF, to be registered and maintain registration as a SB SEF with the Commission, to comply with: (i) the Core Principles described in Section 3D(d) of the Exchange Act; and (ii) any requirement that the Commission may impose by rule or regulation.[115] The Commission proposes to implement the requirements of Section 3D(d)(1) of the Exchange Act in proposed Rule 810(a) of Regulation SB SEF.

The Commission proposes in Rule 810(b) to require a SB SEF to have rules for the maintenance of certain standards of fairness in dealings with participants on their markets. The proposed requirements in Rule 810(b) are derived from similar requirements that national securities exchanges are subject to under Section 6(b) of the Exchange Act.[116] The Commission preliminarily believes that the analogous requirements incorporated into proposed Rule 810(b) are appropriate because SB SEFs, like national securities exchanges, are subject to statutory requirements to establish and enforce trading and participation rules that will deter abuses and provide impartial access to their markets.[117]

Proposed Rule 810(b)(1) would require a SB SEF to establish rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and any other users of its system.[118] This requirement is comparable to a similar requirement for national securities exchanges in Section 6(b)(4) of the Exchange Act.[119] SB SEFs, like exchanges, presumably would assess dues, fees, or other charges on the various market participants that trade on their markets. The purpose of this proposed requirement is to ensure that SB SEFs apply those dues, fees and other charges among participants and any other users of their systems in ways that are fair and equitable, and not in ways that inequitably favor, or discriminate against, one or more classes of such persons. Thus, proposed Rule 810(b)(1) would support the requirement in Core Principle 2 and the proposed rules thereunder that SB SEFs must provide for impartial access to their markets by ensuring that each market participant's access to the SB SEF is not limited by an inequitable distribution of dues, fees, or other charges assessed by the SB SEF.[120] In this regard, proposed Rule 810(b)(1) also is designed to promote fair competition on SB SEFs.

Proposed Rule 810(b)(2) would require a SB SEF to establish rules and systems that are not designed to permit unfair discrimination among participants and any other persons using its system. This proposed requirement is comparable to one of the requirements for national securities exchanges contained in Section 6(b)(5) of the Exchange Act.[121] In practical terms, the proposal would compel SB SEFs to design their rules and systems in ways that would treat the various market participants in the SB SEF similarly, unless appropriate considerations, consistent with the goals of the Exchange Act, provide a justification for treating some market participants differently. Like proposed

[112] Rule 15c3–5(c) requires the financial risk management controls and supervisory procedures to be reasonably designed to: (i) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and (ii) prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders; (iii) prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis or if restricted from trading those securities; (iv) restrict access to trading systems and technology that provide access to permit access to persons and accounts that are pre-approved and authorized; and (v) assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. *See* 17 CFR 240.15c3–5(c).

[113] Rule 15c3–5(d) requires the financial and regulatory risk management controls and supervisory procedures to be under the direct and exclusive control of the broker or dealer subject to the requirements of the rule, except under certain proscribed circumstances. Rule 15c3–5(e) imposes certain requirements pertaining to regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by the rule and for promptly addressing any issues. *See* Rule 15c3–5(d) and (e), 17 CFR 242.15c3–5(d) and (e).

[114] The Commission notes that participants that provide sponsored access to SB SEFs would be required to register with the Commission as a broker under Section 15(a)(1) and (b) of the Exchange Act.

[115] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(1) of the Exchange Act).

[116] 15 U.S.C. 78f(b).

[117] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2)(B) of the Exchange Act).

[118] *See* proposed Rule 810(b)(1).

[119] Section 6(b)(4) of the Exchange Act requires the rules of the exchange to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

[120] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2) of the Exchange Act) and proposed Rule 811(b).

[121] Section 6(b)(5) of the Exchange Act provides, in part, that the rules of the exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78f(b)(5).

Rule 810(b)(1), proposed Rule 810(b)(2) is designed to support the impartial access requirements of Core Principle 2 and promote fair competition on SB SEFs.

Proposed Rule 810(b)(3) would require a SB SEF to establish rules that promote just and equitable principles of trade.[122] This proposed requirement is comparable to a similar requirement for national securities exchanges contained in Section 6(b)(5) of the Exchange Act.[123] The purpose of proposed Rule 810(b)(3) is to require SB SEFs to design their rules in a manner that advances the goals of the Exchange Act of promoting fair and competitive markets for SB swaps. SB SEFs, by establishing rules for trading and monitoring trading among buyers and sellers of SB swaps on their systems, could play a significant role in the development of regulated markets for SB swaps, which in turn would help reduce incidents of systemic risk.

Finally, proposed Rule 810(b)(4) would require a SB SEF to adopt rules that, in general, would provide a fair procedure for disciplining participants for violations of the rules of the SB SEF.[124] This proposed requirement is analogous to a similar requirement for national securities exchanges in Section 6(b)(7) of the Exchange Act.[125] A SB SEF is required, pursuant to Section 3D(d)(2) of the Exchange Act, to enforce compliance with any of its rules.[126] SB SEFs may choose to enforce rules on their markets by applying penalties and taking other disciplinary actions against participants for violations of their rules. Proposed Rule 810(b)(4) is designed to ensure that, when the SB SEF pursues disciplinary action against a participant for violations of the SB SEF's rules, the participant is afforded a fair process.

While the Commission intends for a SB SEF to retain flexibility in establishing its disciplinary procedures, the Commission anticipates that such rules would have to comply with rules recently proposed under Regulation MC,[127] should those rules be adopted by the Commission. Proposed Rule 702(h) under Regulation MC would require any disciplinary process of a SB SEF to preclude any group or class of participants from dominating or exercising disproportionate influence on the disciplinary process. In other words, to the extent that there is more than one type of group or class of persons that are participants in a SB SEF, the composition of any disciplinary panel or other disciplinary body should not allow one group or class to have representation that is out of proportion in comparison to other groups or classes of persons that are participants in the SB SEF. In addition, any panel or other body that is responsible for disciplinary decisions, and any appellate body for the reviewing of disciplinary decisions, would have to include at least one independent director.[128] The Commission preliminarily believes that proposed Rule 810(b)(4) under Regulation SB SEF would supplement and enhance the proposed requirements of Regulation MC, although the Commission requests comment on the extent to which both sets of rules are necessary to mitigate potential conflicts of interest with respect to the SB SEF's disciplinary process.[129]

Proposed Rule 810(c) would prohibit a SB SEF from using any confidential information it collects or receives, from or on behalf of any person, for non-regulatory purposes. The purpose of proposed Rule 810(c) is to prevent the SB SEF from taking commercial advantage of any confidential information that it receives in connection with its regulatory responsibilities.

The Commission requests comments on all aspects of the proposed Rule 810 implementing Core Principle 1. Are the provisions of proposed Rule 810 appropriate and sufficiently clear? If not, why not and are there preferable alternatives? What are the benefits and drawbacks of imposing on SB SEFs proposed requirements that are comparable to those statutory provisions that are applicable to national securities exchanges under the Exchange Act?

Is the Commission's proposed rule that would require a SB SEF's rules to provide for fees, dues, and other charges that are reasonable and equitably allocated among participants and any other persons using its system appropriate and sufficiently clear? Is this requirement necessary? If not, why not and are there preferable alternatives to help support the statutory goal of impartial access? Are there circumstances under which it would not be appropriate to require the SB SEF to allocate fees, dues, and other charges equitably? In what instances might a SB SEF seek to differentiate among its users with respect to fees, dues, and other charges, including discounts and rebates? Should any of those instances be permitted or restricted?

Is the Commission's proposed rule requiring a SB SEF to establish rules and systems that are not designed to permit unfair discrimination among participants and any other persons using its system appropriate and sufficiently clear? If not, what additional guidelines should the Commission consider for determining when a rule or system would create unfair discrimination among users of the SB SEF's system? What, if any, existing aspects of the current market for SB swaps may lead to unfair discrimination among market participants?

Is the Commission's proposed rule requiring a SB SEF to establish rules to promote just and equitable principles of trade appropriate and sufficiently clear? Are there any specific rules or practices that the Commission should require SB SEFs to adopt for this purpose? If so, what rules or practices, existing or otherwise, should the Commission require? Should the Commission provide guidance on the types of rules that it believes would promote just and equitable principles of trade?

Are there any other requirements that the Commission should impose on a SB SEF to promote fair markets and competition? What factors would most promote fair markets and competition in trading SB swaps, in particular?

Is the proposed requirement that a SB SEF establish a fair procedure for disciplining participants for violations of the rules of the SB SEF appropriate and sufficiently clear? Are there any standards that the Commission should require, at a minimum, for such fair procedures? Is it sufficiently clear how SB SEFs could comply with this requirement in light of the requirements of proposed Rule 702(h) in Regulation MC, which would require the SB SEF to preclude any group or class of participants from dominating or exercising disproportionate influence on the SB SEF's disciplinary process and to have at least one independent director on any disciplinary panel? If not, in what way is the interaction of proposed Rule 810(b)(4) of Regulation SB SEF and proposed Rule 702(h) of Regulation MC unclear and what steps could the Commission take to improve these provisions? Should the Commission provide further guidance on how SB SEFs could establish disciplinary

[122] *See* proposed Rule 810(b)(3).

[123] Section 6(b)(5) of the Exchange Act provides, in part, that the rules of the exchange must be designed to promote just and equitable principles of trade. 15 U.S.C. 78f(b)(5).

[124] *See* proposed Rule 810(b)(4).

[125] Section 6(b)(7) of the Exchange Act requires the rules of the exchange to provide a fair procedure for the disciplining of members and persons associated with members. 15 U.S.C. 78f(b)(7).

[126] 15 U.S.C. 78c–4(d)(2).

[127] *See* Regulation MC Proposing Release, *supra* note 82.

[128] *See* proposed Rule 702(h) under Regulation MC, Regulation MC Proposing Release, *supra* note 82.

[129] For a discussion of further proposals to mitigate conflicts of interest related to SB SEFs, *see infra* Section XVII.

procedures that would comply with the requirements of proposed Rule 810(b)(4) in Regulation SB SEF? Are there additional measures that the Commission should take to foster the independence of the SB SEF's disciplinary process, such as requiring any appeals of disciplinary actions to be considered by the SB SEF's independent directors?

Proposed Rule 810(c) would prohibit SB SEFs from using for non-regulatory purposes any confidential information they collect or receive in connection with their regulatory obligations. Would this proposed rule provide sufficient protection from the improper use of sensitive information by a SB SEF? If not, what other measures should the Commission consider requiring SB SEFs to implement to protect the confidentiality of the non-public information that they collect or receive? Please provide specific suggestions and explain how such suggestions would better address the need to keep non-public information confidential.

VIII. Core Principle 2—Compliance With Security-Based Swap Execution Facility Rules

Section 3D(d)(2) of the Exchange Act (Core Principle 2) states that a SB SEF shall: (A) Establish and enforce compliance with any rule established by such SB SEF, including (i) the terms and conditions of the SB swaps traded or processed on or through the facility and (ii) any limitation on access to the facility; (B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means (i) to provide market participants with impartial access to the market and (ii) to capture information that may be used in establishing whether rule violations have occurred; and (C) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.[130] The Commission is proposing to implement these statutory requirements in proposed Rule 811(a) of Regulation SB SEF.

The Commission believes that the primary issues raised by this Core Principle relate to the rules that a SB SEF must establish and enforce regarding access, the SB swaps that could trade on the system, and surveillance, investigation and enforcement of participants' activities on the SB SEF. In proposing Rule 811(a) of Regulation SB SEF to implement this Core Principle, the Commission has been informed by its experience with regulating both national securities exchanges and ATSs, while recognizing that differences exist between the cash equities and listed options markets and the market for SB swaps.

Much as Sections 6 and 19 of the Exchange Act[131] require that national securities exchanges have rules, among other things, to govern trading, membership, and discipline of its members, the Commission preliminarily believes that, pursuant to Section 3D(d)(2) of the Exchange Act, SB SEFs should have similar rules. In this way, participants would be fully informed of the rules governing various aspects of the operation of the SB SEF and the requirements governing trading on the system, and would recognize that there would be consequences if they fail to comply with those rules. Below is a discussion of the rules that, in the Commission's view, would need to be developed and implemented by SB SEFs to comply with Core Principle 2. These proposed rules are not meant to be an exhaustive list, and the Commission believes that a SB SEF would need to evaluate its own market to determine the measures that are necessary to implement the Core Principles.

A. Denials or Limitations on Access

Core Principle 2 is in part concerned with limitations on access and mandates that SB SEFs provide impartial access to their markets.[132] The Commission discusses the substantive issues relating to access, and the rules it is proposing relating to access, in Section VI above.[133] The Commission believes that one of the most important requirements of Core Principle 2 concerns the SB SEF's rules regarding impartial access to the facility. The Commission discusses the procedural rules it is proposing in connection with the Core Principle 2 requirement for impartial access below. As the Commission noted in the Regulation MC Proposing Release, participants of a SB SEF might seek to limit the number of direct participants of the SB SEF to limit competition and increase the opportunity for higher profit margins.[134]

The Commission is proposing several procedural rules in support of the proposed requirements for impartial access discussed above in Section VI. First, proposed Rule 811(b)(3) would require every SB SEF to make and keep records of all grants of access, including, for all participants, the reasons for granting such access, and all denials or limitations of access, including, for each applicant, the reasons for denying or limiting access. The purpose of proposed Rule 811(b)(3) is to ensure that Commission staff would have the ability to examine such records upon request, pursuant to the requirements of proposed Rule 814 of Regulation SB SEF.[135] In addition, proposed Rule 811(b)(4) would require each SB SEF to file notice with the Commission (by filing an annual amendment to proposed Form SB SEF[136] and in the compliance report required of the CCO pursuant to Core Principle 14 and proposed Rule 823 of Regulation SB SEF), if the SB SEF prohibits or limits access to the facility for any participant, or if the SB SEF denies access to an applicant.[137] In its notice, a SB SEF should inform the Commission of the reasons for its denial of access and provide the Commission with the contact information of the aggrieved participant or applicant.[138] Together, these requirements, which would provide the Commission with information about, or access to information about, any instances when the SB SEF has denied access to a participant or an applicant to become a participant, should help the Commission carry out its oversight of SB SEFs. This ability is particularly important given the identified potential

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[130] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2) of the Exchange Act).

[131] *See, e.g.,* Sections 6(b) and 19(g) of Exchange Act, 15 U.S.C. 78f(b) and 78s(g).

[132] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2)(A)(ii) and 3D(d)(2)(B) of the Exchange Act).

[133] *See supra* Section VI, notes 79 to 114.

[134] *See* Regulation MC Proposing Release, *supra* note 82. *See also infra* Section VI. As discussed further in Section XVII below, the Commission proposed a number of requirements in Regulation MC designed to mitigate potential conflicts of interest relating to SB SEFs, as discussed in the Regulation MC Proposing Release. The additional rules the Commission is proposing herein relating to impartial access are designed to work together with proposed Regulation MC to help mitigate potential conflicts of interest, as identified in the Regulation MC Proposing Release. In addition, as discussed in Section XVII, the Commission is proposing governance rules that also are designed to help mitigate potential conflicts of interest relating to SB SEFs.

[135] *See infra* Section VI discussing proposed Rule 814 regarding the Commission's ability to obtain information.

[136] *See infra* Section XXII discussing proposed Form SB SEF. The Commission notes that proposed Form SB SEF would be a publicly available document, and so such notice would be publicly available.

[137] *See infra* Sections XXIII and XXI for a discussion of Form SB SEF and the responsibilities of the CCO, respectively.

[138] The Commission could bring an enforcement action if it believed that a SB SEF had denied or limited access in contravention of the Exchange Act and the rules thereunder.

conflict of interest concerns with respect to access to a SB SEF.[139]

Further, under proposed Rule 811(b)(5), a SB SEF would be required to establish a fair process for the review of any prohibition or limitation on access with respect to a participant or any refusal to grant access with respect to an applicant.[140] Fair access to trading venues for SB swaps, and consequently a fair review process, is important, especially when a SB SEF may be the only venue for the trading of a particular SB swap. The Commission believes that for any such review process by a SB SEF to be fair, at a minimum, those persons involved in the decision to prohibit, limit, or deny a participant's or applicant's access to the SB SEF should not be involved in the review of whether such prohibition, limitation, or denial was appropriate. Otherwise, the purpose of the review process could be undermined. The SB SEF's Board should consider the most appropriate body to conduct the internal review process, whether that body is the Board itself, a committee that is delegated this function by the Board, or some other appropriate body.

The Commission requests comment on all aspects of its proposal regarding denials or limitations of access. Is the proposed rule requiring a SB SEF to notify the Commission annually of any prohibition, limitation, or denial of access to its services appropriate and sufficiently clear? Would this be useful information for market participants and the public? Should the Commission require notice more often than annually? Would the proposal assist in mitigating conflicts of interest on the part of a SB SEF? If so, how so? If not, why not?

Is the Commission's proposed rule regarding a SB SEF's review of its denials of access appropriate and sufficiently clear? If not, why not and what would be a better approach? Are there any measures that the Commission could require that would result in a more meaningful internal review process? For example, should the Commission explicitly require that the Board or the regulatory oversight committee ("ROC") review all denials of or limitations on access?[141] Would such a proposal be useful? If so, within what time frame should the review be completed? Are there any other requirements the Commission should impose?

B. Swap Review Committee

Proposed Rule 811(c) would require a SB SEF to establish and enforce compliance with rules concerning the terms and conditions of the SB swaps traded on the facility. To carry out this requirement, a SB SEF would be required to establish a swap review committee[142] to determine the SB swaps that trade on the SB SEF, as well as the SB swaps that should no longer trade on the SB SEF. The proposed rule would require that the composition of the swap review committee provide for the fair representation of participants in the SB SEF and other market participants. Specifically, the proposed rule would require that each class of participant and other market participants (such as the customers of participants, including end-users and buy-side firms) would have the right to participate in the swap review committee. The proposed rule also would provide that the members of the swap review committee be chosen so that no single class of participant or category of market participant would predominate. The rules of the SB SEF also would be required to stipulate the method by which such representation would be chosen by the Board of the SB SEF.[143] Having a compositionally balanced committee should help to assure that the process of determining those SB swaps that should trade (or no longer should trade) would be fair and that various classes of participants in the SB SEF, as well as other market participants, would have a voice in those decisions.

Proposed Rule 811(c)(3) would require the SB SEF to establish criteria to be used by the swap review committee in determining which SB swaps should be traded on the SB SEF. The Commission preliminarily believes that this would allow the most flexibility by permitting a SB SEF to choose whatever criteria it believes are important in determining which SB swaps to trade, thereby encouraging as much trading of SB swaps on SB SEFs as possible.

The Dodd-Frank Act requires that transactions involving SB swaps subject to the clearing requirement of subsection (a)(1) of Section 3C of the Exchange Act be executed on an exchange or on a registered SB SEF unless no exchange or SB SEF makes the SB swap available to trade.[144] Consequently, once a SB swap is "made available to trade" on an exchange or a SB SEF (and is required to be cleared), it can no longer trade in the OTC market, making the determination of what it means for a SB swap to be "made available to trade," as well as the decision as to who makes such a determination, central to the implementation of Title VII of the Dodd-Frank Act. The Commission has received comments that the scope of those SB swaps that are made available for trading would be important in this market because of the mandatory trade execution requirement and the nature of the SB swap market,[145] which is relatively illiquid and has a smaller number of market participants in comparison to the cash equities and listed options markets.[146]

In the Regulation MC Proposing Release, the Commission identified conflicts of interest that could arise when a small number of market participants exercise control or undue influence over a SB SEF.[147] When trading of SB swaps is dominated by a small number of participants, those

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[139] *See* Regulation MC Proposing Release, *supra* note 82.

[140] *See* proposed Rule 811(b)(5). Such a process is required for all national securities exchanges and for ATSs that have exceeded certain volume thresholds. *See* Sections 6(c) and 19(e) of the Exchange Act (15 U.S.C. 78f(c) and 78s(e)) and Rule 301(b)(5) (17 CFR 242.301(b)(5)) of Regulation ATS.

[141] The Commission proposed in Regulation MC to require a SB SEF to have a ROC, and that the ROC be composed of independent directors. *See* Regulation MC Proposing Release, *supra* note 82.

[142] The swap review committee would not be required to be a committee of the Board under the Commission's proposed rule, although a SB SEF may choose to allow or require members of its Board to serve on the swap review committee, as the SB SEF would determine.

[143] *See* proposed Rule 811(c)(2).

[144] *See* Section 3C(h) of the Exchange Act. The requirement in Section 3C(h) of the Exchange Act that a SB swap that is made available to trade on an exchange or a SB SEF shall be traded on an exchange or SB SEF (and not in the OTC market) only applies to SB swaps subject to mandatory clearing. Section 3C(h) of the Exchange Act generally states that, with respect to transactions involving SB swaps subject to the clearing requirement of paragraph (a)(1) of Section 3C, counterparties shall: (1) Execute the transaction on an exchange; or (2) execute the transaction on a registered SB SEF or a SB SEF that is exempt from registration. However, these requirements shall not apply if no exchange or SB SEF makes the SB swap available to trade or for SB swap transactions subject to the clearing exception in paragraph (g) of Section 3C.

In a separate proposed rulemaking, the Commission, among other matters, is seeking comment generally on how the factors identified in the statute relating to the mandatory clearing requirement should be applied in making determinations as to whether particular SB swaps are or should be required to be cleared. *See* Securities Exchange Act Release No. 63557 (December 15, 2010), 75 FR 82490 (December 30, 2010) (File No. S7–44–10).

[145] *See, e.g.,* Commentary by Yves P. Denizé, Director & Associate General Counsel, TIAA–CREF, at the Roundtable. Webcast available at *http://www.sec.gov/news/openmeetings/2010/jac091510.shtml.*

[146] The market for SB swaps today is concentrated in the hands of a few dealers. *See supra* note 81, stating that five large commercial banks represent 97% of the total banking industry notional amounts.

[147] *See* Regulation MC Proposing Release, *supra* note 82, 75 FR at 65890.

participants may have competitive incentives to, among other things, limit the number of SB swaps that are made available for trading by a SB SEF to keep those SB swaps trading in the OTC market. This could be true even for SB swaps that would have sufficient trading activity to trade on a SB SEF.[148] On the other hand, once the determination has been made that a SB swap that is subject to mandatory clearing is available to trade on an exchange or a SB SEF, then such SB swap can no longer trade in the OTC market, even if trading of the SB swap on the exchange or SB SEF were virtually nonexistent. Thus, a determination by even one SB SEF or national securities exchange that a SB swap was available to trade on the exchange or SB SEF could have unintended consequences for the trading of such SB swap.

In light of these competing incentives stated above, the Commission preliminarily believes that it would be appropriate that the decision as to when a SB swap would be considered to be "made available to trade" on an exchange or a SB SEF pursuant to Section 3C(h) of the Exchange Act should be made pursuant to objective measures established by the Commission, rather than by one or a group of SB SEFs. Such objective measures could provide that a SB swap that is subject to mandatory clearing would be "made available to trade" unless the SB swap fails to meet a threshold test that the Commission may adopt or, conversely, that no SB swap would be "made available to trade" unless the SB swap passed a threshold test that the Commission may adopt. In either case, under this approach the Commission would in effect interpret the phrase "made available to trade" in Section 3C(h) of the Exchange Act as meaning something more than the decision to simply trade, or essentially list, a SB swap on a SB SEF or an exchange.[149] This approach would have the further effect of permitting SB swaps to be made subject to mandatory clearing independently of whether they are required to be traded exclusively on SB SEFs and exchanges, because there would not be an automatic requirement that SB swaps subject to mandatory clearing trade only on a SB SEF or exchange simply because they are listed on one.

The Commission does not, however, have sufficient data at this time to propose the objective standards pursuant to which a determination whether a SB swap is "made available to trade" would be made. The Commission preliminarily anticipates that it will separately address how to determine when a particular SB swap would be considered to be "made available for trading" on an exchange or SB SEF pursuant to the directive of Section 3C(h) of the Exchange Act. We solicit comment in this release, however, on how the Commission should craft an objective standard for whether a SB swap is "made available to trade." For example, an objective determination could be based on a formula measuring the percentage of trading in a particular SB swap that was taking place on exchanges and SB SEFs compared to the aggregate percentage of trading that was taking place in the SB swap on exchanges and SB SEFs, and in the OTC market.[150] Alternatively, such a determination could be based on overall volume in the SB swap, wherever executed. In addition, such a test could require that a baseline trading threshold for each SB swap be met. For example, such a threshold could be that, within a given measurement period, a minimum number of transactions in the SB swap be executed or that a minimum notional value in the SB swap be traded. There may be instances when, because of a low total number of transactions in a SB swap, it may not be appropriate to determine that such SB swap should be made available to trade.

It also may be appropriate to utilize objective measures to determine when a SB swap should no longer be considered to be made available for trading. If it were determined that a SB swap should no longer be considered to be made available for trading because, for example, among other objective measures very little trading in such SB swap on SB SEFs has occurred over a specified time period, such SB swap would be able to trade in the OTC market, as well as on exchanges and SB SEFs.

Proposed Rule 811(c)(4) would require the swap review committee to periodically review each SB swap trading on the SB SEF to determine whether the trading characteristics of each such SB swap justify a change to the trading platform being used for that particular SB swap. In making such a determination, the swap review committee would need to consider whether (1) the liquidity in each SB swap is at an appropriate level for the SB swap's trading platform on which it trades; and (2) such SB swap would be more suited for trading on a different type of platform, including a platform that provides for increased price transparency for participants entering quotes, orders, or other trading interest. The first review could not be earlier than 120 days after the initiation of trading for a given SB swap.

Proposed Rule 811(c)(4) is designed to ensure that SB swaps that are trading on the SB SEF are trading on an appropriate platform. For example, if a SB swap is trading in an RFQ mechanism but trading in the SB swap becomes sufficiently liquid, the SB SEF should consider moving the SB swap to a platform with greater transparency. There could be reasons why the SB SEF prefers not to do so, *e.g.,* because the predominant dealers on the market prefer to continue trading the SB swap in the RFQ platform that does not have the same degree of transparency and thus competition, as a limit order book. Having such decisions made by the swap review committee, and reported promptly to the CCO and annually to the ROC and the Board (as discussed in the next paragraph), appear to lessen any undue influence that any one class of participants may have in keeping the SB swap trading on a platform that does not afford the appropriate level of price transparency for that SB swap.

Proposed Rule 811(c)(5) would require the swap review committee to report decisions on each SB swap promptly to the CCO and annually to the ROC. This would include initial decisions on trading SB swaps as well as ongoing determinations pursuant to the reviews of the swap review committee. This would help ensure that the CCO is kept apprised of changes in the trading of SB swaps so that trading can be properly monitored.

The Commission requests comment on all aspects of the rules relating to the swap review committee and its responsibilities. Is the Commission's proposed rule concerning the composition of the swap review committee appropriate and sufficiently clear? Should the Commission's rule contain more detail about the requirements for the composition of the committee? If so, what should those requirements be? Should the

[148] *Id.*

[149] Pursuant to proposed Rule 811(c), the swap review committee of each SB SEF would be responsible for determining which SB swaps the SB SEF permits to be traded on the SB SEF. Under the proposed approach, however, this decision would not be the same as a determination that such SB swap had been made available for trading within the meaning of Section 3C(h) of the Exchange Act. The swap review committee's decision, therefore, would not in and of itself be the sole determinant of when a SB swap could no longer trade in the OTC market.

[150] Because all SB swap transactions would be required to be reported to a registered SDR, whether they occur on an exchange, a SB SEF, or in the OTC market, the Commission would have access to complete information on trading volume regarding each SB swap.

Commission require independent director representation on the swap review committee?

Is the Commission's proposed Rule 811(c)(3) concerning how the SB SEF should determine whether to trade a SB swap appropriate and sufficiently clear? Should the Commission include any particular factors that the SB SEF should consider, and, if so, what should those factors be and why?

As discussed above, under the proposal the Commission would interpret the phrase "made available to trade" in Section 3C(h) of the Exchange Act as meaning something more than the decision to simply trade, or essentially list, a SB swap on a SB SEF or an exchange. The Commission requests comment on whether commenters agree with this approach, or if, instead, we should consider a SB swap to be "made available to trade" if it is listed on an exchange or a SB SEF in compliance with applicable rules and regulations. What are the advantages and disadvantages of such an approach? Would the approach be more or less simple and cost-effective than the proposal, which would involve the Commission in determining whether a SB swap is "available to trade" and distinguishes this from the determination under proposed Rule 811(c)(3) of whether a SB swap should be traded or listed on a SB SEF? Does the review under proposed Rule 811(c)(3) accomplish many or all of the Commission's regulatory objectives? Would an approach that deems a SB swap "available to trade" if it is listed be more or less susceptible to manipulation or gaming than the proposed approach? Would an approach that deems a SB swap "available to trade" if it is listed generally result in more or less trading of SB swaps on exchanges or SB SEFs? If the Commission were to take the position that listing of a SB swap on an exchange or a SB SEF is the same as "made available to trade," could the Commission's potential concerns about permitting SB SEFs and exchanges to determine whether a SB swap is "available to trade" be addressed through an exemptive process that could consider potential adverse effects or unintended consequences as to particular SB swaps? Are the Commission's potential concerns about permitting SB SEFs and exchanges to determine whether a SB swap is "available to trade" affected by the types of trading permitted on a SB SEF, such as the ability to send an RFQ to only one or few other participants? If the Commission were to take the position that listing of a SB swap on an exchange or SB SEF is the same as "made available to trade," the Commission could subject SB swaps to mandatory clearing independently of whether such SB swaps are required to be traded on SB SEFs or exchanges by, for example, using an exemptive process or specifying, at the time the mandatory clearing determination is made, that a SB swap is not "available to trade" unless certain criteria are met. What would be the advantages and disadvantages of such an approach compared to the Commission's proposal?

The Commission requests comment on whether it would be appropriate for the decision as to when a SB swap would be considered to be "made available to trade" on an exchange or a SB SEF pursuant to Section 3C(h) of the Exchange Act to be made pursuant to objective measures established by the Commission, rather than by one or a group of SB SEFs. If not, why not? If not, is there another method that commenters would suggest, other than having the determination made by SB SEFs? If so, what is that method?

The Commission requests comment on the manner in which the determination to make a particular SB swap available for trading would be made. What would be an appropriate method or standards to determine whether a SB swap should be made available for trading? Should the test be based on the aggregate amount of trading in the SB swap on exchanges and SB SEFs and in the OTC market, or on overall volume, wherever the SB swap may be executed? What would be an appropriate volume threshold for each alternative, and why? Should a volume threshold vary by asset class? Is one test more appropriate for some asset classes and the other test more appropriate for others? If so, why, and what is the appropriate volume threshold for each asset class with each test? What would be the appropriate measurement period for a volume threshold and why? On what other characteristics could the test be based? Frequency of trading? The number of SB SEFs on which the SB swap is also trading?

Should there be some minimum level of liquidity in both the OTC market and on SB SEFs and exchanges in connection with the determination that a SB swap has been made available to trade? If so, what is the appropriate level of liquidity? What is a baseline threshold that SB swaps made available to trade should meet? Should it be based on the number of transactions, the notional value for a given SB swap, or both, over a set time period? Or, is there another baseline threshold that the Commission should consider? If so, what is it? Over what time period should the activity be measured?

What would be an appropriate test to determine that a SB swap should no longer be considered to be made available for trading? Because such a SB swap would not be trading in the OTC market, a volume test similar to one of the suggested tests above to determine whether a SB swap should be considered to be made available for trading—comparing the aggregate percentage of trading on exchanges and SB SEFs to overall trading—may not be feasible. How little trading on SB SEFs should be taking place before the Commission determines that the SB swap should be permitted to trade again in the OTC market (because it is no longer considered to be "made available for trading")? Is there a specific number of trades that would make it appropriate to determine that a SB swap is no longer considered to be made available for trading? If so, what should that number be? Or, should a test be based on a percentage trading volume comparison of trading activity in a SB swap to a time period prior to when it was considered to be made available to trade? What period of time would be appropriate to determine if a pattern of lack of trading has set in? Should such a determination be based on a test based on something other than trading volume? If so, what should such a test be? How should the Commission take into account the possibility that market participants might engage in gaming behavior to affect the outcome of a test based on trading frequency or volume?

Should the presumption be that no SB swap is deemed made available to trade unless it meets the threshold established by any test that the Commission may adopt, or should the presumption be that all SB swaps are deemed available to trade unless they fail to meet the threshold established by any such test? What would be the costs and benefits of each approach?

Has the Commission correctly identified the potential conflicts with SB SEFs that could arise in decisions to make a SB swap available to trade? Would the proposal the Commission has outlined here help to mitigate those conflicts? If not, why not?

How, if at all, would having the determination about what SB swaps are made available for trading be made pursuant to an objective formula, as the Commission is considering to propose, rather than allowing each SB SEF to make the determination, impact the incentives for creating a SB SEF? Would the proposal have the effect of chilling the creation of SB SEFs because trading

could simply continue in the OTC market until trading meets the objective test? If so, how should the determination of what is made available to trade be made? How should the Commission guard against the concern that, if a distinction is not made between "listing" or "trading" of a SB swap, and "making available to trade," OTC trading could effectively be cut off in SB swaps that were made available to trade, even if market participants believe that they would benefit from continued OTC trading? Is this concern mitigated if the Commission adopts an interpretation of the definition of SB SEF that permits an RFQ to be sent to only one other participant? Why or why not? Under such approach, would there still remain benefits for the OTC trading of certain types of SB swaps by market participants? If so, what would be these benefits and under which circumstances, and for what types of SB swaps, would this be the case? How should those benefits, if any, be weighed with the Dodd-Frank Act's goal of moving trading in SB swaps onto regulated markets?

Would the idea of looking at volume trading on SB SEFs and SBS exchanges versus trading in the OTC market be subject to gaming? For example, would it be possible for firms to avoid having SB swaps designated as made available to trade, for example, by suppressing SB SEF trading volume by posting inferior quotes on SB SEFs while continuing to offer the identical product in the OTC market at a better price? If so, what impact would such behavior have on the SB swap market? If so, how could the Commission guard against such behavior?

If the Commission has not adopted a standard for determining when a SB swap is made available to trade by the time a SB swap is determined to be subject to mandatory clearing, what action, if any, should the Commission take to clarify the impact of a SB SEF or exchange listing a SB swap for trading on its market? Would it be necessary or appropriate for the Commission to clarify the meaning of "made available to trade" in these circumstances and, if so, what type of clarification should the Commission provide? Commenters should address the impact, if any, of any action or inaction by the Commission in these circumstances on market participants and on the trading of SB swaps, including the impact of any clarifications that commenters may propose.

Is the Commission's proposed Rule 811(c)(4) requiring review by the swap review committee of the liquidity of SB swaps, and its potential requirement for an SB SEF to move trading of the SB swap to a different type of platform operated by the SB SEF that would provide for greater pre-trade price transparency, once certain volume thresholds are met, sufficiently clear? Is it necessary for a swap review committee to review SB swaps trading on limit order book platforms, as well as multiple dealer RFQ platforms? If not, why not? Should the Commission establish a trading activity threshold that, if exceeded, would require a SB SEF to move the trading of SB swaps to a limit order book platform? If so, what would be the appropriate factors and threshold? For example, should such factors include the liquidity of the SB swap? If so, how should such liquidity be measured (*e.g.,* average daily trading volume, frequency of trades, size of trades)? What would be an appropriate measurement period for any such threshold(s)? Should a threshold vary depending on the type of SB swap? Should a threshold be relative (*e.g.,* based on a specified percentage of overall volume) or absolute (*e.g.,* based on a specific number of trades in a given measurement period)? What are the benefits and drawbacks of mandating a trading activity threshold that, if exceeded, would require a SB SEF to move the trading of SB swaps to a limit order book platform?

C. Trading Procedures

Proposed Rule 811(d) would require every SB SEF to establish and enforce rules governing the procedures for trading on the SB SEF, including but not limited to: doing business on the SB SEF; types of orders or other trading interest available; the manner in which trading interest would be handled on the SB SEF, including a proposed requirement that the rules provide for the fair treatment of all trading interest; the manner in which price transparency for participants entering orders, requests for quotations, responses, quotations, or other trading interest into the system would be promoted; the manner in which trading interest, including orders, requests for quotations, responses, quotations, and transaction data, would be disseminated, including whether dissemination would be only to participants of the SB SEF or more broadly, and whether or not for a fee; prohibited trading practices; the handling of clearly erroneous trades; trading halts; the manner in which block trades would be handled, if different from the handling of non-block trades; and any other rules concerning trading on the facility. The Commission believes that it is important for a SB SEF to have rules concerning doing business on the SB SEF because such rules would provide participants with a uniform set of expectations for how the SB SEF would operate.

The Commission expects that such rules would include information as basic as the hours the SB SEF is available for trading, as well as rules concerning the manner in which trading interest would be handled by the SB SEF. Such rules also would help to inform participants as to the types of orders or other trading interest that they could enter into the system for execution. The Commission also believes that rules concerning prohibited trading practices would be important to every SB SEF, so that participants would be aware of the scope of allowable behavior on the SB SEF. Such rules would help to support the requirement in Core Principle 2 that every SB SEF would have to establish rules that would deter abuses and have the capacity to detect, investigate and enforce those rules.

The Commission believes that it is important to the efficient trading on a SB SEF that the SB SEF provide for the fair treatment of all trading interest on its market. In other words, a SB SEF should have rules designed to enhance liquidity, including rules that are not designed to disadvantage participants' orders, thereby causing them to miss out on trading opportunities. Such rules might include, for example, price/time priority or price/size priority rules.[151] The SB SEF would need to apply these rules consistently and fairly with regard to all participants.

In addition, as discussed in Section III above, the Commission believes that transparency of prices on a SB SEF is a critical element with respect to the operation of a SB SEF. Although the Commission is not proposing to dictate a certain type of trading system or trading rules for SB SEFs, it believes that a SB SEF would have to meet certain basic standards to comply with the requirements that its rules provide for the fair treatment of all trading interest and that these rules address the manner in which price transparency for participants entering trading interest into the system would be promoted. In this regard, under its proposed interpretation of the definition of SB

[151] Generally, when orders are filled in price/time priority, if there are two orders at the same price, the order that arrived first would be given priority. Alternatively, size may be used to determine priority among trading interest at the same price. For example, orders may be filled pro-rata, or in certain proportions based on other factors the SB SEF may determine are appropriate. *See, e.g.,* International Securities Exchange Rule 713, Priority of Quotes and Orders.

SEF, if the SB SEF operates a RFQ or similar trading model, the rules of the SB SEF should include a functionality that allows the quote requesting participant to submit a RFQ to all participants that are willing to respond to requests, *i.e.,* those participants willing to provide liquidity. The SB SEF, however, could determine to provide the functionality for the requesting participant to choose to send the RFQ to less than all other participants at the request of its customer or when the participant is exercising investment discretion. In addition, the requestor would be able to determine to whom to send the RFQ.

Further, for example, if the SB SEF operates a RFQ mechanism, the rules of the SB SEF should specify that any response to an RFQ that is provided to the participant submitting the RFQ should be included in the composite indicative quote of the SB SEF.[152] In addition, if a SB SEF displays firm, executable trading interest, it must display such interest to all participants.

The Commission believes that it is important to foster pre-trade transparency to encourage greater price competition. However, the Commission is cognizant of comments received from market participants in the SB swap market, both from customers ("buy-side") and liquidity providers ("sell-side"), who are concerned about the level of pre-trade price transparency that may be required. Some of these commenters have expressed the concern that pre-trade price transparency could potentially have an impact on dealers' incentives or ability to provide competitive prices if others can use the information that would be made available through increased pre-trade price transparency to trade ahead of the order. The proposed rules relating to the dissemination of trading interest are designed to increase transparency from current levels, while at the same time recognizing the concerns that have been voiced about the potential effects of pre-trade transparency in certain circumstances. In this regard, proposed Rule 811(d)(5) has been drafted to allow maximum flexibility by a SB SEF to determine the best manner to disseminate trading interest by such SB SEF. The Commission believes that it is important for a SB SEF to make clear to its participants, in a rule, how trading interest would be disseminated. At the same time, the Commission recognizes that different platforms may require different means of disseminating trading interest, and that each SB SEF is in the best position to determine how such dissemination should occur on its own platform. In particular, the Commission believes that proposed Rule 811(d)(5) would require a SB SEF to develop rules that would incorporate responses received on an RFQ system into a composite indicative quote that is available to all participants, and that would not limit the number of dealers from whom a participant could request a quote.

The Commission also believes that SB SEFs should have rules that concern any prohibited trading practices. A SB SEF should determine those trading practices that it believes are inappropriate to the functioning of its market.

The Commission also believes that a SB SEF should have rules concerning the handling of clearly erroneous trades, and that those rules should provide for a fair and nondiscriminatory manner of handling such trades, as well as a procedure to resolve any resulting disputes. Although under ordinary circumstances trades that are executed between parties should be honored, the Commission believes that clearly erroneous execution rules are necessary because, on rare occasions, the terms of the executed trade may indicate that an obvious error may exist. In such instances, it could be unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In such case, a clearly erroneous transaction may have taken place. The Commission believes that any clearly erroneous execution rule should provide for a clear and transparent process for resolving erroneous trades and for a fair process for hearing appeals of clearly erroneous decisions.

The Commission further believes that it is critical for a SB SEF to have rules concerning trading halts, so that trading on the SB SEF would not continue when trading has been halted or suspended in the underlying security or securities pursuant to the rules or an order of a regulatory authority with authority over the underlying security or securities.[153] The Commission believes that when trading has been halted on an underlying security, it is appropriate that derivative markets, such as the options markets and the SB swap market, also halt trading to avoid inefficient pricing and disruptions to the market.

Core Principle 2 requires that SB SEFs establish (and have the capability to enforce) rules regarding trading procedures. The items enumerated in proposed Rule 811(d) are not meant to be an exhaustive list of rules relating to trading procedures and SB SEFs may put in place additional types of categories of rules that they deem to be necessary to govern the procedures for trading on the SB SEF. The Commission preliminarily believes that each SB SEF would be in the best position to determine precisely those rules that are necessary and appropriate to ensure that its market functions in a fair and orderly fashion. The rules of each SB SEF would be required to be filed as part of the initial Form SB SEF application, as well as in connection with the rule filing process in proposed Rules 805 and 806 of Regulation SB SEF.[154]

The Commission requests comment on all aspects of proposed Rule 811(d). What are commenters' views on the proposed rules relating to trading procedures? Are the Commission's proposed rules concerning trading procedures, the need to promote pre-trade price transparency (proposed Rule 811(d)(4)) and the rule concerning dissemination of trading interest (proposed Rule 811(d)(5)) sufficiently clear? Would proposed Rule 811(d)(4) make a difference in price transparency in the SB swap market? How would it impact behavior? Are there any specific concerns with this proposed rule? If so, what are they? Should the proposed rule be refined? If so, how? Please provide specific suggestions.

What are commenters' views on the proposed requirement that responses to an RFQ must be included in the SB SEF's composite indicative quote? Would this requirement in fact promote pre-trade price transparency? What would be the benefits and drawbacks of the Commission's proposal to include RFQ responses in the composite indicative quote? Should the Commission instead require that only the response to an RFQ accepted by the party submitting the RFQ be included in a composite indicative quote? Should the Commission require that any participant responding to an RFQ have

[152] The composite indicative quote screen would be the quote screen available to all participants of the SB SEF. The composite quote shows an average quote for each SB swap available on the SB SEF. The composite indicative quote includes both composite indicative bids and composite indicative offers. As discussed below, proposed Rule 811(e) would require a SB SEF that operates a RFQ platform to create and disseminate through the SB SEF a composite indicative quote for SB swaps traded on or through the SB SEF and to make that screen available for viewing by all participants in the SB SEF.

[153] The Commission notes that the options and securities futures markets have rules providing for a trading halt in the event that the underlying security has been paused in the equity markets. *See, e.g.* Chicago Board Options Exchange Rule 43.4(b).

[154] *See infra* Section XXIII for a discussion of the proposed rule filing process for SB SEFs.

the ability to see other participants' responses? Would such a requirement make a difference with respect to pre-trade price transparency? What would be the benefits and drawbacks of such a proposal? Should the Commission require that all requests for quote be shown to all participants? Would such a requirement make a difference with respect to pre-trade price transparency? What would be the benefits and drawbacks of such proposals?

Should the Commission require a SB SEF to have a rule prohibiting the SB SEF from disclosing to any liquidity provider that has received an RFQ information about how many participants were queried? What would be the impact of such a prohibition, taking into account such factors as the type of SB swap and the size of the transaction, on the liquidity provider's incentives in determining at what price to provide a response? Should the participant submitting the RFQ be able to waive any such prohibition in the exercise of its investment discretion?

For SB SEFs that choose to allow trading of uncleared SB swaps should the Commission require such SB SEFs to have additional trading rules related to uncleared SB swaps, such as rules for disclosing the counterparties to such transactions or other rules related to counterparty risks? Please provide specific suggestions.

Proposed Rule 811(e) would require a SB SEF that operates an RFQ platform to create and disseminate through the SB SEF a composite indicative quote for SB swaps traded on or through the SB SEF.[155] The composite indicative quote would need to be made available to all participants of the SB SEF. The composite indicative quote would include both composite indicative bids and composite indicative offers. The Commission preliminarily believes that a composite indicative quote would provide valuable pricing information to the participants of a SB SEF, while at the same time not disclosing specific trading interest of individual participants when that interest is not firm. As discussed above, the Commission believes that including responses to an RFQ in the composite indicative quote also may be appropriate as a means to further increase pre-trade price transparency. A composite indicative quote would provide some information on pricing but would take into account concerns expressed by some market participants about information leakage that could occur, particularly with respect to larger sized orders.[156] In addition, the Commission understands that many platforms operating today in the SB swaps market create and disseminate a composite indicative quote.

The Commission requests comment on all aspects of proposed Rule 811(e). What are commenters' views on the proposed requirement that a SB SEF must disseminate a composite indicative quote? What would be the benefits or drawbacks of such a proposal? Would such a requirement provide an increased level of pre-trade price transparency compared to the level that is available today? Are there other measures the Commission should impose at this time to foster pre-trade price transparency? If so, what are they? For example, should the Commission require a SB SEF to provide functionality to enable market participants to post individual indicative quotes, in addition to a composite indicative quote? What would be the advantages and disadvantages of such a proposal?

Considering the early stage of development of the regulatory framework for the SB swap market and the existing structure of the SB swap market, the Commission is mindful that its interpretation of the definition of SB SEF, and the rules it is proposing herein to implement the Dodd-Frank Act, could have unforeseen consequences, either beneficial or undesirable, with respect to the shape that this market will take. In the Commission's view, it is important that the regulatory structure will provide incentives for the trading of SB swaps on regulated markets that are designed to foster greater transparency and competition that are subject to Commission oversight, while at the same time allowing for the efficient operation and continued evolution of the SB swap market. With that in mind, should the Commission mandate greater pre-trade price transparency at the outset of trading of SB swaps on SB SEFs? What would be the benefits of mandating greater pre-trade price transparency at the start of trading of SB swaps on a SB SEF and what would be the drawbacks of such an approach? Would the benefits outweigh the drawbacks and vice versa? Commenters should explain their reasoning. Should the Commission propose additional trading rules to be required of SB SEFs? If so, what should those rules cover with regard to trading procedures?

D. Block Trades

Core Principle 2 requires a SB SEF to establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.[157] The issue of block trades on a SB SEF has two components: (1) How should a "block trade" be defined, *i.e.,* at what threshold would a trade be considered block size; and (2) how should block trades be handled on a SB SEF. Issues relating to the execution, as well as the reporting, of a block trade, have been a particular focus of market participants. Market participants that execute block trades in SB swaps, including dealers and buy-side customers, have raised concerns regarding pre-trade transparency of block trades. They believe that if other market participants know the terms of a block trade prior to the time it is executed, those other market participants could attempt to profit from the information about the block to the detriment of the initiator of the block trade. If the information is disclosed before the block trader's liquidity provider is "on risk," other market participants could buy or sell ahead of the block trade initiator, moving the market against the block trade initiator (but not adversely affecting its counterparty). If the liquidity provider for the block trade initiator is "on risk" when the information is disclosed, other market participants could buy or sell ahead of the liquidity provider, making it more costly for the liquidity provider to hedge the transaction. If the liquidity provider anticipates such price movement, front-running by market participants could make the transaction more costly for the block trade initiator, as the liquidity provider may provide it with less favorable quotations in order to protect itself from the impact of such disclosure.[158] Some market participants also are concerned that if a block trade were required to interact with other trading interest on a SB SEF, there might not be enough liquidity on the SB SEF to execute the entire block trade, leaving a portion of the block trade unexecuted. These market participants are worried about the execution risk of doing block trades on a SB SEF. Not having a large trade filled, or having it filled at a disadvantageous price as a result of having to enter into more than one trade as part of the execution

[155] *See supra* note 152 for a description of a composite indicative quote.

[156] *See infra* Section VIII.D for a discussion of block trades.

[157] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(2)(C) of the Exchange Act).

[158] *See* Reporting and Dissemination Release, *supra* note 6, for a discussion of the concerns surrounding post-trade transparency.

process, could hurt investment performance.[159]

For these reasons, market participants have urged exceptions for the handling of block trades, including the ability to negotiate and execute block trades without having to interact with trading interest on the SB SEF. Market participants even have indicated a willingness to forego available pre-trade transparency in order to keep their proprietary block trading strategies private.

The Commission is sensitive to these concerns. However, the Commission also is concerned that allowing the execution of block trades on a SB SEF in a manner that is subject to less pre-trade transparency than the minimum level that would be required by Commission rules, for example, by allowing block trades to be executed off of the SB SEF and then reported to the SB SEF without interacting with trading interest on the SB SEF (*i.e.,* using the SB SEF as a "print facility"), could circumvent the mandatory trade execution requirement and undermine the goals of providing for more transparent and competitive trading on a SB SEF. Therefore, although the Commission believes that it is permissible for a SB SEF to establish different trading rules for block trades generally, block trades would still be subject to the various minimum requirements that the Commission has established with respect to pre-trade transparency[160] and interaction with other trading interest on the SB SEF, as discussed above.[161]

SB SEFs would have flexibility, therefore, to establish different rules for the trading of block trades on their facilities, as long as those rules were clear as to how block trades would be handled and would comply with the rules being proposed today.[162] A SB SEF could, for example, allow a limit order book platform to use a separate multi-dealer RFQ component to execute block trades, as long as the block trade interacts with existing interest on the SB SEF (*i.e.,* the limit order book portion of the SB SEF that handles orders that are not blocks) and otherwise complies with the proposed requirements that are part of this rulemaking. Also, under the Commission's proposed interpretation of the definition of SB SEF, a SB SEF that operates a RFQ platform and that requires an RFQ to be disseminated to all participants, could, for example, permit participants to choose to send an RFQ to fewer than all participants, including just one. In a system that allows participants to display firm quotes, the system (and rules) would need to be designed to provide that a block trade, like any other trade, would interact with the displayed orders based on a fair method. Thus, to the extent that liquidity exists on a central limit order book trading platform of the SB SEF, a block trade would be required to interact with those pre-existing resting bids and offers.[163] The Commission also notes that, until a SB swap that is determined to be subject to the mandatory clearing requirement and is determined to have been made "available to trade" on a SB SEF or an exchange, the SB swap could be traded in block size off a SB SEF or exchange.

The Commission is proposing to require that a SB SEF define a "block trade" to have the same meaning as in Rule 900 of Regulation SBSR relating to trade reporting.[164] This would mean that each SB SEF would use the same threshold for determining what constitutes a block trade for a particular "security-based swap instrument," as calculated by a registered SDR.[165] The Commission believes that it is important for each SB SEF to use the same threshold for block trades to ensure consistency and uniformity across SB SEFs.[166] The Commission notes, however, that until it establishes the criteria and formula for determining a block trade pursuant to proposed Rule 907(b) of Regulation SBSR, proposed Rule 800 of Regulation SB SEF would permit a SB SEF to set its own criteria and formula for determining what constitutes a block trade as long as such criteria and formula are consistent with the Core Principles and the rules and regulations thereunder.

The Commission seeks comments on its proposed definition and treatment of block trades. Should the definition of block trade have the same meaning in the context of a SB SEF and in the context of trade dissemination and reporting? Is there anything about pre-trade versus post-trade transparency that warrants having different definitions of a block trade in the context of proposed Regulation SB SEF and proposed Regulation SBSR? [167] Are there other definitions of block trade that the Commission should consider? Do commenters agree with the proposed approach to block trades on SB SEFs? Is pre-trade transparency for block trades desirable? If so, why? If not, why not? Should SB SEFs be permitted to have discretion regarding implementation of rules governing the handling of block trades? For example, should block trades be permitted to be executed in "one participant to one participant" transactions and then "printed" on the SB SEF? If the Commission were to adopt its proposed interpretation of the definition of SB SEF, would such flexibility be necessary in light of the fact that, under the proposed interpretation, a requester can choose to

[159] *See, e.g.,* Hendrik Bessembinder & Kumar Venkataraman, *Does an Electronic Stock Exchange Need an Upstairs Market?* J. of Fin. Econ., Vol. 73 (2004) ("Bessembinder Paper"), finding that execution costs of a block trade in an "upstairs" market are much lower than would be if the block trade were executed in a "downstairs" market.

[160] *See,* for example, *supra* Sections III.B and VIII.C, discussing the proposed requirement that SB SEFs that operate a RFQ mechanism disseminate a composite indicative quote and make it available to all participants, the aspects of the proposed interpretation that all responses to a request for quote be included within the composite indicative quote and that SB SEFs cannot limit the number of liquidity providers to whom a request for quote is sent.

[161] *See,* for example, *supra* Section VIII.C.

[162] Proposed Rule 811(d) would require that a SB SEF establish and enforce rules governing the procedures for trading on the SB SEF including the handling of block trades if different from other trades.

[163] If a SB SEF operated a central limit order book and a separate RFQ mechanism, the SB SEF's systems would be required to ensure that any trade to be executed in the RFQ mechanism interacted with any existing firm interest on the central limit order book at the same or better price before interacting with interest on the RFQ platform. For example, assume that such a SB SEF had a 5,000 notional resting order on its limit order book in SB swap A and that a 100,000 notional RFQ in SB swap A was entered into and disseminated to liquidity providers in the RFQ mechanism. If the resting limit order has a price equal to or greater than the price at which a response(s) comes back in the RFQ mechanism to execute the RFQ order, the SB SEF system would be required to execute 5,000 of the RFQ order against the resting limit order and 95,000 against the response(s).

[164] *See* proposed Rule 800 (defining "block trade" as having the same meaning as in Rule 900 of Regulation SBSR under the Exchange Act) and Reporting and Dissemination Release, *supra* note 6. Rule 900 of Regulation SBSR would define a block trade to mean a large notional SB swap transaction that meets the criteria set forth in Rule 907(b) of Regulation SBSR, which states that a registered SDR shall establish and maintain written policies and procedures for calculating and publicizing block trade thresholds for all security-based swap instruments reported to the registered SDR in accordance with the criteria and formula for determining block size as specified by the Commission.

[165] *See* Reporting and Dissemination Release, *supra* note 6, and proposed Rule 900 for a definition of "security-based swap instrument."

[166] The Commission notes that even if more than one registered SDR establishes the block trade threshold for a SB swap, the thresholds would be identical because each SDR in the same class of SB swap would use the same data to calculate the threshold. *See* Reporting and Dissemination Release, *supra* note 6, for a more detailed discussion.

[167] *See, e.g.,* Memorandum by the Staff of the Division of Risk, Strategy and Financial Innovation of the U.S. Securities and Exchange Commission to File No. S7–34–10, Release No. 34–63346, dated January 13, 2011. The memorandum is submitted as a comment letter to the Reporting and Dissemination Release, *supra* note 6, and is available at: *http://www.sec.gov/comments/s7-34-10/s73410-12.pdf.*

submit an RFQ fewer than all participants, including to just one participant? Should there be other exceptions for block trades, such as an exception for a clean cross? [168] What would be the benefits and drawbacks of such proposals? Should any such proposals be subject to any conditions, such as allowing block trades an exemption from the minimum pre-trade transparency and order interaction requirements on a temporary basis or not permitting "one participant to one participant" transactions to be printed on a SB SEF after trading activity in the SB swap crosses a specified liquidity threshold?

What would be the effect of requiring block trades to interact with existing interest on the SB SEF, to the extent firm trading interest is available? What impact, if any, would that requirement have on price competition occurring on the SB SEF in that particular SB swap? If hidden trading interest were permitted on a SB SEF's trading system, how should such interest be handled under the interaction requirement? If block trades were required to interact with hidden trading interest, would that encourage hidden interest and discourage displayed interest? What would be the impact of allowing block trades to be executed off of the SB SEF and then "printed" on a SB SEF, or to execute without interaction with existing interest? What impact, if any, would that have on price competition on the SB SEF in that particular SB swap? What impact would such a proposal have on the incentives of market participants to post firm interest in that SB swap? Would this proposal create a significant disincentive for market participants to enter any sizeable volume for execution on the SB SEF? What other requirements, if any, should the Commission impose to promote incentives to post firm quotes? Are there any alternative methods to provide for pre-trade transparency for block trades without requiring block trades to interact with other bids and offers on a SB SEF? If so, how would these alternative methods impact the requirements and goals of the Dodd-Frank Act? Are there alternative trading mechanisms, such as crossing systems, that could be used to trade blocks? How would these alternative trading mechanisms comply with the pre-trade transparency requirements? Are there other special provisions that should apply to block trades? If so, what are they, and why would they be appropriate?

The Commission recognizes that the SB swap market is different in certain respects than the market for cash equities and listed options. For example, many fewer market participants account for a significant amount of the trading in SB swaps. In addition, there is not at this time any direct retail participation in the SB swap market. Further, trading in SB swaps generally is much less liquid than for many NMS stocks and listed options. How, if at all, do these factors, or other factors regarding the structure of the SB swap market, impact the handling of block trades in the SB swap market, and how should they, if at all, impact the proposed treatment of block trades on SB SEFs?

E. Trade Processing Procedures

Proposed Rule 811(f) would require a SB SEF to establish and enforce rules concerning the reporting of trades executed on the SB SEF to a clearing agency and procedures for the processing of transactions in SB swaps that occur on or through the SB SEF, including, but not limited to, procedures to resolve any disputes concerning the execution of a trade.

The Commission believes that the types of rules contemplated by proposed Rule 811(f) are important to contributing to the fair and orderly functioning of any SB SEF, and to ensure that trades executed on a SB SEF are properly transmitted to the applicable registered clearing agency. In the Commission's view, these types of rules would aid a SB SEF in contributing to the operation of an orderly market. The Commission believes that the rules of the SROs could provide appropriate models to SB SEFs concerning the types of rules that would satisfy the requirements of this proposed rule. Alternatively, the Commission could find the rules of other regulated entities appropriate for use as models as well, upon review.

The Commission requests comment generally on all aspects of proposed Rule 811(f). Is the Commission's proposed rule sufficiently clear? Are there other aspects of trading procedures, aside from the reporting of trades to a clearing agency and procedures for the processing of transactions in SB swaps and for the handling of disputes that should be addressed? If so, what additional information should be included in such a rule? Should the Commission require SB SEFs to compare and report confirmed trades [169] to clearing agencies, or is it appropriate to leave the choice to SB SEFs? Please be specific.

F. Disciplinary Rules and Procedures

Proposed Rule 811(g) would require a SB SEF to establish rules and procedures concerning the disciplining of its participants including, but not limited to: authorizing the SB SEF's staff to recommend and take disciplinary action for alleged violations of the SB SEF's rules; specifying the sanctions that may be imposed on participants for violations of the SB SEF's rules (provided that each sanction is commensurate with the corresponding violation); and establishing fair and non-arbitrary procedures for any disciplinary process, and appeals thereof.

SB SEFs are required by Section 3D(d)(2) of the Exchange Act to enforce compliance with their rules. Proposed Rule 811(g) is designed to require the SB SEF to have baseline rules relating to its disciplinary process to help it carry out its statutory responsibilities.[170]

Proposed Rule 811(h) would require the SB SEF to make and keep specific records of all disciplinary proceedings and sanctions imposed, and all appeals, and to disclose disciplinary actions on an annual amendment to Form SB SEF and on the SB SEF's annual report of the CCO required by Section 3D(d)(14) of the Exchange Act and proposed Rule 823.[171] While this proposed requirement also would be part of the recordkeeping requirement of the SB SEF under Core Principle 9, the Commission is restating it in connection with Core Principle 2, since these records would need to be maintained and information about disciplinary actions disclosed by the SB SEF. This information, which could be used by the Commission to review the disciplinary process at a SB SEF, would provide the Commission with an additional tool to

[168] *See, e.g.,* National Stock Exchange Rule 11.12 describing acceptable clean cross orders as a cross: (1) That is for at least 5,000 shares and has an aggregate value of at least $100,000; (2) with a size greater than the size of the interest at each side of the top of book; and (3) with a price equal to or better than the Protected NBBO.

[169] This would parallel certain reporting requirements for locked-in trades in the equity and debt markets. A locked-in trade is one in which all of the terms and conditions of the trade are agreed to and accepted by the buyer and the seller. *See, e.g., http://www.amex.com/servlet/AmexFnDictionary?pageid=display&titleid=3784.*

[170] In fashioning their disciplinary rules, SB SEFs may be informed by the rules on disciplinary proceedings maintained by the national securities exchanges. *See, e.g.,* Chicago Board Options Exchange, Chapter XVII (Disciplinary Rules) and New York Stock Exchange Rules 475–477 (Disciplinary Rules).

[171] *See infra* Sections XXI (discussing Core Principle 14) and XXIII (discussing proposed Form SB SEF). The Commission notes that information provided on proposed Form SB SEF is public.

carry out its oversight responsibilities with respect to SB SEFs.[172]

The Commission requests comment generally on all aspects of proposed Rule 811(h). Is the Commission's rule concerning disciplinary rules and procedures sufficiently clear? Should the proposed rule include greater specificity regarding the disciplinary processes for SB SEFs, including the review of disciplinary actions? If so, what provisions should be included in any such rule? Should participants in the SB SEF, or customers of participants, be involved in the disciplinary process? If so, in what regard? Should the CCO be required to be involved in any disciplinary process?

G. Surveillance for Rule Violations

Proposed Rule 811(i) would require a SB SEF to establish rules and procedures to assure that the information to be used to determine whether rule violations have occurred is captured and retained in a timely manner. Proposed Rule 811(j) would require the SB SEF to have the capacity to capture information that may be used in establishing whether rule violations have occurred, including through the use of automated surveillance systems as set forth in proposed Rule 813(b),[173] maintain appropriate resources to fulfill these obligations, and investigate possible rule violations.

The Commission believes that, to be able to effectively carry out its obligations to enforce compliance with its rules, a SB SEF must have the capability to monitor trading activity to determine whether rule violations are occurring or have occurred.[174] The rules proposed in Rules 811(h) and (i) are designed to require a SB SEF to have baseline rules relating to surveillance of its market to help it carry out its statutory responsibilities.

The Commission requests comment generally on all aspects of proposed Rule 811(i). Are the Commission's proposed rules on surveillance of rule violations sufficiently clear? If not, what additional information is required? Please be specific. Should SB SEFs be required to exchange information with other SB SEFs that have listed the same SB swaps for trading to properly surveil trading in those SB swaps on its market? How would any exchange of information with other SB SEFs be accomplished? Should SB SEFs have access to trading information for similar SB swaps trading in the OTC derivatives market? If so, how would this be accomplished? What guidelines should the Commission use to determine what SB swaps are sufficiently similar to require such access? Should SB SEFs be required to share information with other regulatory authorities? For example, if a SB SEF detects unusually high activity in a particular SB swap, what guidelines would be appropriate for the sharing of this information with the Commission and other regulatory authorities that regulate the underlying asset?

IX. Core Principle 3—Manipulation

Section 3D(d)(3) of the Exchange Act (Core Principle 3) provides that a SB SEF shall permit trading only in SB swaps that are not readily susceptible to manipulation.[175] To implement Core Principle 3, the Commission is proposing Rule 812.

Proposed Rule 812(a) would implement the requirements of Core Principle 3. Proposed Rule 812(b) would provide that before a SB SEF may permit the trading of a SB swap on the SB SEF, the SB SEF's swap review committee must have determined, after taking into account all of the terms and conditions of the SB swap and the markets for the SB swap and any underlying security or securities, that such SB swap is not readily susceptible to manipulation. The proposed requirement that the swap review committee consider not only the market for the SB swap, but also the market for any underlying security or securities is intended to make clear that the swap review committee must consider whether an underlying or reference security could make a SB swap readily susceptible to manipulation.[176] Under proposed Rule 812(c), after a SB SEF commences trading of a SB swap, its swap review committee would be required to periodically review trading in the SB swap. If the swap review committee cannot determine, after taking into account all of the terms and conditions of the SB swap, the markets for the SB swap and any underlying security or securities, and trading in the SB swap, that such SB swap is not readily susceptible to manipulation, the SB SEF would be required to no longer permit the trading of the SB swap.

Because Core Principle 3 permits a SB SEF to trade only SB swaps that are not readily susceptible to manipulation, the Commission preliminarily believes that the proposal to require every SB SEF's swap review committee to consider the terms and conditions of the SB swap and the markets for the SB swap and any underlying security or securities, and make an affirmative determination that the SB swap is not readily susceptible to manipulation before a SB SEF trades a SB swap, and to periodically review that determination after trading commences, is a reasonable approach to implementing the statutory language of Core Principle 3. Further, as discussed above, proposed Rule 811(c)(1) would require a SB SEF's swap review committee to determine whether to trade a SB swap and whether a SB swap that has commenced trading should continue to trade on the SB SEF.[177] Under proposed Rule 812, the swap review committee would be required to also consider whether a SB swap raises manipulation concerns before trading such product.

The Commission generally requests comment on all aspects of proposed Rule 812. Additionally, the Commission requests comment as to whether there are any types of SB swaps trading today that a SB SEF's swap review committee should presume are not readily susceptible to manipulation. What factors would or should a SB SEF take into consideration when making a determination whether a SB swap would be readily susceptible to manipulation? Should the Commission provide more guidance regarding what being "readily susceptible to manipulation" means in the context of SB swaps? If so, what guidance should the Commission provide? Should the Commission require a SB SEF to consider objective criteria concerning

[172] *See* Regulation MC Proposing Release, *supra* note 82, 75 FR at 65912, discussing the requirement in proposed Rule 702(g) under Regulation MC relating to compositionally balanced disciplinary panels for SB SEFs.

[173] *See infra* Section X (discussing Core Principle 4). Core Principle 4, which would be implemented in proposed Rule 813, requires a SB SEF, among other things, to monitor trading in SB swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

[174] *See infra* Section X (discussing Core Principle 4).

[175] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(3) of the Exchange Act).

[176] The Commission notes that it is not unusual for national securities exchanges to include in their listing standards for derivatively-priced securities provisions concerning the market for the underlying components. *See, e.g.,* Chicago Board Option Exchange Rule 5.3 (listing standards for options contracts which include, among other things, requirements relating to the trading volume and number of holders of the underlying security); NYSE Arca Rule 5.2(j)(3) Commentary .01(a) (listing standards for index-based exchange-traded funds, which include, among other things, requirements relating to the trading volume and market value of underlying components).

[177] Pursuant to proposed Rule 811(c)(3), a SB SEF would be required to establish criteria that its swap review committee should consider in determining which SB swaps should trade on the SB SEF. *See supra* Section VIII.B.

the underlying security or securities? If so, what should these criteria be? [178]

The Commission recognizes that it might be difficult to determine whether a particular SB swap is readily susceptible to manipulation. Further, individual SB SEFs—as well as various market participants and investors—may have differing views on whether a particular SB swap is readily susceptible to manipulation. In light of the potential need for further clarity on this question, the Commission therefore requests comment on whether it should consider adopting a safe harbor consisting of objective criteria for purposes of meeting the requirements of Section 3D(d)(1) of the Exchange Act with respect to Core Principle 3. If so, what would be appropriate objective criteria for such a safe harbor provision? Should the criteria relate to characteristics of the SB swap or the market for the underlying, or the procedures to be followed by the SB SEF in making a determination as to whether an SB swap is readily susceptible to manipulation, or a combination of both? For example, should the Commission consider adopting a safe harbor that includes thresholds relating to trading volume, number of holders, and/or market value of the underlying security or securities? [179] Should the criteria to be included in any safe harbor be the same as or different from any criteria that the Commission may adopt with respect to the mandatory clearing determination or the determination of when a SB swap is made available to trade? Commenters are requested to be as specific as possible as to what the appropriate criteria for a safe harbor would be.

Is the proposed periodic review requirement necessary or appropriate? Should the Commission define how frequently a SB SEF must review its determination that a SB swap is not readily susceptible to manipulation? If so, what would be an appropriate frequency for such a review?

X. Core Principle 4—Monitoring of Trading and Trade Processing

Section 3D(d)(4) of the Exchange Act (Core Principle 4) requires a SB SEF to establish and enforce rules or terms and conditions defining or specifications detailing: (i) trading procedures to be used in entering and executing orders traded on or through the facilities of the SB SEF; and (ii) procedures for trade processing of SB swaps on or through the facilities of the SB SEF.[180] This Core Principle also requires SB SEFs to monitor trading in SB swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.[181] The Commission is proposing Rule 813 of Regulation SB SEF to implement Core Principle 4. The Commission believes that the requirements of proposed Rule 813 would aid potential registrants in evaluating whether the rules they propose to implement and the mechanisms they would establish to monitor trading in SB swaps would comply with the Core Principle.

Proposed Rule 813(a) would implement the statutory language of the Core Principle. Proposed Rule 813(b) would require a SB SEF to have the capacity and appropriate resources to electronically monitor trading in SB swaps on its market by establishing an automated surveillance system, including real time monitoring of trading and the use of automated alerts, that is designed to detect and deter any fraudulent or manipulative acts or practices, including insider trading or other unlawful conduct or any violations of the rules of the SB SEF; to detect and deter market distortions or disruptions of trading that may impact the entry and execution of trading interest or the processing of trading interests; to conduct real-time monitoring of trading to provide for comprehensive and accurate trade reconstruction; and to collect and assess data to allow the SB SEF to respond promptly to market abuses or disruptions. The Commission preliminarily believes that requiring a SB SEF to establish such an automated surveillance system would enable the SB SEF to comply with the requirements of Core Principle 4 that SB SEFs monitor trading in SB swaps to prevent price manipulation, price distortion, and disruptions of the delivery or cash settlement process. In addition, Core Principle 4 specifically requires SB SEFs to have methods for conducting real-time monitoring of trading.[182]

Proposed Rule 813(c) would require a SB SEF to establish and enforce rules that require any participant that enters an order, request for quote, or other trading interests, or executes any transaction on the SB SEF to maintain books and records of any such order, request for quote or other trading interests, or transaction, and any positions in any SB swap that is the result of any such order, request for quote, or other trading interest or transaction on the SB SEF, and to provide prompt access to such books and records to the SB SEF and the Commission. Finally, proposed Rule 813(d) would require a SB SEF to establish and maintain procedures to investigate possible rule violations, to prepare reports of the findings and recommendations of such investigations, and to take corrective actions, as necessary.

The proposed rule's requirement that participants maintain books and records of their activity on the SB SEF and make them available to the SB SEF and the Commission would aid the SB SEF in detecting and deterring fraudulent and manipulative acts with respect to trading on its market, as well as help it to fulfill the statutory requirement in Core Principle 4 that a SB SEF monitor trading in SB swaps, including through comprehensive and accurate trade reconstructions. The proposed rule also would aid the Commission in carrying out its responsibility to oversee the SB SEF. The proposed rule's requirement that the SB SEF establish and enforce procedures to investigate possible rule violations and prepare reports is designed to ensure that the SB SEF fulfills its statutory obligation under this Core Principle to prevent manipulation, price distortions, and disruptions in the market.

The Commission requests comment on all aspects of proposed Rule 813. Is the proposed rule sufficiently clear? Do commenters believe that SB SEFs would encounter issues in establishing an automated surveillance system for real-time monitoring of trading and in collecting or assessing data to allow the SB SEF to respond promptly to market abuses or disruptions? Would proposed Rule 813(c), which would require participants to provide access to their books and records to the SB SEF and the Commission, be difficult for any particular group of participants (*e.g.,* non-registered ECPs or foreign participants) to comply with? If so, how should the Commission modify the rule to address any such issues?

Should SB SEFs be required to exchange information with each other regarding trading by their mutual participants to facilitate surveillance and investigation of potential

[178] *See supra* note 176, noting examples of national securities exchanges that have included in their listing standards for derivatively-priced securities required consideration of factors such as the trading volume, number of holders, and market value of the underlying security or securities.

[179] *See supra* note 176.

[180] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(4) of the Exchange Act).

[181] *Id.*

[182] *Id.*

manipulative or otherwise violative activity? If so, under what circumstances? Should SB SEFs be required to become members of the Intermarket Surveillance Group ("ISG"),[183] or to form a similar group among themselves? If so, should all SB SEFs be required to join? If not, what types of SB SEFs should be required to join? For example, should SB SEFs be required to join if they trade a certain volume threshold of SB swaps? If so, what should that volume threshold be? Should SB SEFs be required to share information with other regulatory authorities (including SROs)? For example, if a SB SEF detects an unusually high activity in a particular SB swap, what guidelines would be appropriate for the sharing of this information with the Commission and the other regulatory authorities that regulate the underlying asset?

XI. Core Principle 5—Ability To Obtain Information

Section 3D(d)(5) of the Exchange Act (Core Principle 5) requires a SB SEF to establish and enforce rules that would allow the SB SEF to obtain any necessary information to perform any of the functions described in the Core Principles for SB SEFs, provide the information to the Commission on request, and have the capacity to carry out such international information-sharing agreements as the Commission may require.[184] To implement Core Principle 5, the Commission is proposing Rule 814 of Regulation SB SEF.

Proposed Rule 814(a) would require each SB SEF to establish and enforce rules requiring its participants to furnish to the SB SEF, upon request and in the form and manner prescribed by the SB SEF, any information that is necessary for the SB SEF to perform its responsibilities including, without limitation, surveillance, investigating, examinations and discipline of participants. Such information may include, without limitation, financial information, books, accounts, records, files, memoranda, correspondence, and any other information pertaining to orders, requests for quotes, responses, quotations, or other trading interest entered and transactions executed on or through the SB SEF.[185] Proposed Rule 814(a) further would require each SB SEF to establish and enforce rules requiring its participants to cooperate with the SB SEF and any representative of the Commission and allow access by the SB SEF and any representative of the Commission at such reasonable times as the SB SEF or the Commission representative may request to examine the books and records of the SB SEF participant, or to obtain or verify other information related to orders, requests for a quote, responses, quotations, or other trading interest entered and transactions executed on or through, the SB SEF's facilities. These provisions would permit a SB SEF and any representative of the Commission to have access to any information that the SB SEF participants are required to make, keep, and preserve pursuant to any Commission or other rule, and should therefore assist the SB SEF to more effectively perform its obligations, as required by the Core Principles, and the Commission to perform its oversight responsibilities for SB SEFs.

Proposed Rule 814(b) would similarly require the SB SEF to cooperate with any representative of the Commission and allow access by any representative of the Commission to examine the books and records required to be kept by the SB SEF pursuant to proposed Rule 818, to obtain or verify other information related to orders, requests for quote, responses, quotations, or other trading interest entered and transactions executed on or through its facilities, and otherwise provide to any representative of the Commission, upon request, such information that the SB SEF may possess or obtain from its participants pursuant to proposed Rule 814(a). The Commission preliminarily believes that these provisions would be instrumental in enabling the Commission to carry out its oversight and regulation of SB SEFs and the SB swap market and would support the requirement in Core Principle 5 that the SB SEF establish and enforce rules that would allow the SB SEF to obtain any necessary information to perform any of the functions described in the Core Principles and provide the information to the Commission on request.

The Commission preliminarily believes that proposed Rule 814 would reasonably clarify the statutory language of Core Principle 5, which requires a SB SEF to have the ability to "obtain information" and "provide the information to the Commission on request." Specifically, the Commission believes that it is important to its ability to regulate and oversee SB SEFs for the Commission to be able to obtain information by specifying that SB SEFs and SB SEF participants must cooperate, furnish information upon request, provide access to books and records, and be subject to examination.[186] These proposed requirements also would enable the SB SEF to monitor participants on its system and enforce compliance with its rules, as required by Section 3D(d) of the Exchange Act.

Further, proposed Rule 814(b)(3) would require a SB SEF to have the capacity to carry out such international information-sharing agreements as the Commission may require.[187] Proposed Rule 814(b)(4) would require every SF SEF to certify at the time of registration on Form SB SEF, and annually thereafter as part of the annual compliance report described in Rule 823, that the SB SEF has the capacity to fulfill its obligations under any international information-sharing agreements to which it is a party as of the date of such certification.

These proposed regulations would implement the provision of Core Principle 5 requiring SB SEFs to have the capacity to carry out such

[183] ISG was established in the early 1980s and is comprised of an international group of exchanges, market centers and market regulators. ISG states that its purpose is to effectively detect and prevent unfair transactions across markets through market information sharing among its members. *See* ISG's Web site at *http://www.isgportal.org* for additional information on ISG.

[184] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(5) of the Exchange Act).

[185] The requirement that SB SEF participants make, keep and preserve books and records is independent of proposed Rule 814. *See* 17 CFR 240.17a–3 and 240.17a–4, which are applicable to registered broker-dealers. *See also* Public Law 111–203, § 764(a) (adding Section 15F(f)(B) of the Exchange Act, requiring each registered SB swap dealer and major SB swap participant to keep books and records as may be prescribed by the Commission). *See also* proposed Rule 809(c)(2)(i), requiring registered SB swap dealers and registered major SB swap participants to meet the minimum recordkeeping and reporting requirements imposed by the Commission. With respect to eligible contract participants, proposed Rule 809(c)(2)(ii) would require eligible contract participants to meet the recordkeeping and reporting requirements established by the SB SEF pursuant to proposed Rule 813.

[186] The proposed requirements are analogous to the provisions of Section 17(b) of the Exchange Act, which provides that the records of a national securities exchange, among other things, shall be subject to reasonable periodic, special or other examinations by representatives of the Commission, and Rule 17a–4(j) under the Exchange Act, requiring exchange members, brokers and dealers to furnish promptly copies of records that are required to be preserved under the rule to representatives of the Commission. 15 U.S.C. 78q(b)(1) and 17 CFR 240.17a–4(j).

[187] The Commission notes that it is not unusual for a national securities exchange to enter into an information-sharing agreement with a foreign exchange for the purpose of securing information in connection with trading in securities on the foreign exchange that could impact the trading of securities on the U.S. exchange. *See, e.g.,* Securities Exchange Act Release No. 59835 (April 28, 2009), 74 FR 21041 (May 6, 2009) (noting, in connection with proposed listing standards, that NYSE Arca, Inc. had in place an information sharing agreement with the London Metal Exchange ("LME") for the purpose of providing information in connection with trading in or related to futures contracts traded on LME.

international information-sharing agreements as the Commission may require. The Commission preliminarily believes that the proposed rule would help ensure that the SB SEF has the ability to fulfill its regulatory and reporting responsibilities with respect to its market place and its participants, and that the Commission has the information necessary to fulfill its oversight and regulatory responsibilities related to the SB swaps market. The proposed rule also would facilitate information-sharing in the global SB swaps market.

The Commission requests comment on all aspects of proposed Rule 814 relating to the ability to obtain information. Is the proposal that a SB SEF require its participants to furnish information upon request, cooperate with and provide access to the SB SEF too burdensome? Is the proposal that the SB SEF require its participants to furnish information upon request, cooperate with and provide access to any representative of the Commission appropriate?

Is the proposal to similarly require the SB SEF to furnish information upon request, cooperate with and provide access to any representative of the Commission at reasonable times as requested, appropriate? Are there other approaches that the Commission should take to implement the requirement that the SB SEF have the ability to obtain information and provide it to the Commission? Is there information that SB SEFs should be required to provide to the Commission on a regular, periodic basis? If so, what types of information should be provided in such a manner? How often should such information be provided?

Are there any other requirements with respect to international information-sharing agreements that a SB SEF should be required to comply with? Are the proposed requirements too burdensome? If so, why? What are the costs and benefits of the proposed requirements? Should the Commission require a SB SEF to enter into information-sharing agreements with U.S. trading venues for SB swaps, as the Commission may require, or as necessary or appropriate to fulfill its regulatory and reporting responsibilities? Are there any other requirements with respect to domestic information-sharing agreements with which a SB SEF should be required to comply? If so, please explain.

XII. Core Principle 6—Financial Integrity of Transactions

Section 3D(d)(6) of the Exchange Act (Core Principle 6) requires every SB SEF to establish and enforce rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of the SB SEF, including the clearance and settlement of SB swaps pursuant to Section 3C(a)(1) of the Exchange Act.[188] Pursuant to Section 3C(a)(1) of the Exchange Act, SB swap transactions must be cleared through a clearing agency registered with the Commission or a clearing agency exempt from registration, if the Commission has determined that the SB swap is required to be cleared.[189]

The Commission believes that it is important that SB SEFs set specific standards designed to ensure the financial integrity of all their participants. Proposed Rule 815(a) would implement the requirements of Section 3D(d)(6) of the Exchange Act. Proposed Rule 815(b) would permit the rules of a SB SEF to allow a participant trading a SB swap that will not be cleared through a registered clearing agency to consider counterparty credit risk in selecting potential counterparties, notwithstanding the requirements of proposed Rule 810(b)(2).[190] The Commission believes that these requirements, taken together, should strengthen the financial integrity of SB swap transactions that occur on the SB SEFs by reducing the counterparty credit risks associated with uncleared SB swaps transactions.

As noted above,[191] the Commission identified in the Regulation MC Proposing Release certain conflicts of interest that may provide incentives for certain dominant market participants to limit access by potential competing market participants to SB SEFs. A SB SEF could put in place participant standards, including capital requirements and other financial requirements, in a way that would unfairly restrict access to a SB SEF. For example, a SB SEF could have a very high capital requirement for participation that may exclude some smaller dealers from participation in the SB SEF. On the one hand, while appropriate participation standards, including financial requirements, would support this Core Principle that requires SB SEFs to have rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of the SB SEF, unduly high standards may without justification exclude persons who are otherwise qualified to trade on the SB SEF. On the other hand, the Commission is mindful that broadening access could come at the expense of sound risk management practices. Thus, lessening capital or other financial requirements to increase participation beyond a certain level may increase the overall risk of the SB SEF's operations.

The Commission seeks comments on all aspects of this proposed Rule 815. The Commission seeks comments on whether an SB SEF should be prohibited from imposing higher capital requirements than the capital requirements imposed by any rules or regulations that the Commission may impose on participants of SB SEFs because such higher standards could be utilized as a means to deter access to a SB SEF. If such a prohibition were adopted, would it be appropriate for the SB SEF to tailor capital requirements to the status of the participant on an objective basis, *e.g.,* having different capital requirements for a liquidity provider with market maker obligations than a participant without such obligations? If adopted, should such prohibition apply to trading in cleared and uncleared SB swaps? In addition, the Commission seeks comment on what additional safeguards, if any, would be necessary to ensure the financial integrity of SB swap transactions executed on a SB SEF. For swaps cleared by a registered clearing agency, should a SB SEF be required to ensure that it has the capacity to route transactions to the clearing agency? With respect to swaps that are not cleared, should a SB SEF be required to have rules requiring the transacting members to have entered into a credit arrangement for the transaction, demonstrate an ability to exchange collateral, and have appropriate credit filters in place?

XIII. Core Principle 7—Emergency Authority

Section 3D(d)(7) of the Exchange Act (Core Principle 7) requires SB SEFs to adopt rules to provide for the exercise

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[188] *See* Public Law 111–203, § 763(a) (adding Section 3C(a)(1) of the Exchange Act).

[189] The clearing requirement in Section 3C(a) of the Exchange Act contains certain exceptions. For example, Section 3C(g) of the Exchange Act states that a counterparty that is not a financial entity that is using a SB swap to hedge or mitigate commercial risk is not subject to the clearing requirement. Section 3C(g)(1)(C) requires each such counterparty to notify the Commission of how it generally meets its financial obligations associated with entering into non-cleared SB swaps. *See* Section 3C of the Exchange Act for all applicable exceptions and exemptions to the clearing requirements for SB swaps and the requirements relating to clearing agencies of SB swaps.

[190] Proposed Rule 810(b)(2) would prohibit a SB SEF's rules from unreasonably limiting any person in respect to access to the services offered by such SB SEF in an unfair or discriminatory manner. *See supra* Section VII for a discussion of proposed Rule 810(b)(2).

[191] *See supra* Section VI, discussing access to SB SEFs.

of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any SB swap or to suspend or curtail trading in a SB swap.[192] The Commission is proposing Rule 816 to implement Core Principle 7.

Proposed Rule 816(a) would require that every SB SEF establish rules and procedures to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as necessary or appropriate. "Emergency" would be defined in proposed Rule 800 to have the same meaning as set forth in Section 12(k)(7) of the Exchange Act.[193] The Commission believes that the definition of "emergency" in Section 12(k)(7) of the Exchange Act has the advantage of being broad enough to cover unusual or extreme circumstances without being unduly restrictive. The Commission also believes that the proposed use of the Exchange Act's definition of emergency would foster consistency among rules regarding the exercise of emergency authority and promote the use of a consistent definition across securities markets generally.

Proposed Rule 816(c) would require that every SB SEF have rules that permit the SB SEF to immediately take any or all of the following actions during an emergency: (1) Impose or modify trading limits, price limits, position limits, or other market restrictions, including suspending or curtailing trading on its market in any SB swap or class of SB swaps; (2) extend or shorten trading hours; (3) coordinate trading halts with markets trading a security or securities underlying any SB swap; (4) coordinate with a registered clearing agency to liquidate or transfer positions in any open SB swap of one of its participants; and (5) any action directed by the Commission. The Commission preliminarily believes that the actions proposed in proposed Rule 816(c)(1) through (4) would be important powers for a SB SEF to have immediately without the need to seek additional authority from the Commission when an emergency has occurred. The proposed rule would enable a SB SEF to respond promptly during an emergency to maintain fair and orderly markets and foster market integrity and efficiency when ordinary authority would be insufficient.

In light of the breadth of the proposed emergency authority for SB SEFs, proposed Rule 816 also would require that every SB SEF have rules governing the exercise of such emergency authority. Pursuant to proposed Rule 816(b), SB SEF rules and procedures would be required to specify: the person or persons authorized by the SB SEF to declare an emergency; how the SB SEF would notify the Commission and the public of its decision to exercise its emergency authority; the processes for decision making by facility personnel with respect to exercise of emergency authority, including alternate lines of communication and guidelines to avoid conflicts of interest in the exercise of such authority; and the processes for determining that an emergency no longer exists and notifying the Commission and the public of such decision. The Commission believes that it is important that SB SEFs put in place a process for exercising emergency authority in order to help ensure that a SB SEF is prepared prior to any emergency situation and to help ensure that a SB SEF exercises emergency authority appropriately and uniformly.

Proposed Rule 816(d) would require every SB SEF to promptly notify the Commission of the exercise of its emergency authority and, within two weeks following cessation of the emergency, submit written documentation explaining the basis for declaring an emergency, how conflicts of interest were minimized, and the extent to which the facility considered the effect of its emergency action on the markets for the SB swap and any security or securities underlying the SB swap. Proposed Rule 816(d) also would provide that, if a SB SEF implements any rule or rule amendment in the exercise of its emergency authority, it shall file such rule or rule amendment with the Commission pursuant to Rule 806 prior to the implementation of such rule or rule amendment, or, if not practicable, within 24 hours after implementation of such rule or rule amendment. The Commission preliminarily believes that while it is important to provide SB SEFs with the tools necessary to react in emergency situations, requiring SB SEFs to submit a notice and, if applicable, file a certified emergency rule or rule amendment in accordance with proposed Rule 806, would help to deter SB SEFs from using such tools inappropriately. In addition, requiring a SB SEF to notify the Commission and, if applicable, file a certified emergency rule or rule amendment, would allow the Commission to determine whether a SB SEF acted in compliance with proposed Rule 816 and should provide the Commission timely information with respect to the actions taken in any emergency situation.

While some national securities exchanges have rules providing for the exercise of emergency authority by the exchange,[194] there is no specific Commission rule detailing how national securities exchanges should address the issue of emergency authority. In light of the mandate in Core Principle 7 that SB SEFs adopt rules governing the exercise of emergency authority, and in light of the fact that it is likely the same entities will be registered as SB SEFs and SEFs, the Commission's approach to implementing Core Principle 7 is guided by the approach the CFTC has taken with respect to the CEA's requirement that a designated contract market adopt rules to provide for the exercise of emergency authority.[195]

The Commission generally requests comment on all aspects of the proposed rule regarding emergency authority. Additionally, the Commission requests comments as to whether the proposed list of emergency actions that a SB SEF may take is appropriate. Are there any additional actions that should be included? Are there any proposed actions that should not be included? Why or why not?

The Commission notes that it is common for a national securities exchange to consult and cooperate with the Commission prior to responding to highly unusual or emergency market

[192] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(7) of the Exchange Act).

[193] *See* 15 U.S.C. 78*l*(k)(7) (defining the term emergency to mean "(A) a major market disturbance characterized by or constituting—(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or (ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or (B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or (ii) the transmission or processing of securities transactions."

[194] *See, e.g.,* NYSE Rule 49 and Nasdaq Bylaws Article IX, Section 5.

[195] *See* Section 5(d) of the CEA, 7 U.S.C. 7(d) (requiring a board of trade to adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the CFTC, where necessary and appropriate). *See also* 17 CFR part 38, Appendix B to part 38 implementing Section 5(d) of the CEA. Appendix B to part 38 provides, in part, that a designated contract market should have clear procedures for the exercise of emergency authority and should, among other things, be able to impose or modify price limits, order the liquidation or transfer of open positions, order the fixing of a settlement price, order a reduction in positions, extend or shorten the expiration date or the trading hours, suspend or curtail trading on the market, order the transfer of customer contracts and the margin for such contracts from one member including non-intermediated market participants of the contract market to another, or alter the delivery terms or conditions, or, if applicable, should provide for such actions through its agreements with its third-party provider of clearing services.

conditions and expects that a SB SEF would likely do the same before exercising its emergency authority pursuant to proposed Rule 816. However, the Commission requests comment on whether it should require that a SB SEF consult and cooperate with the Commission before it takes any emergency action. Why or why not? Is the proposed definition of emergency appropriate? Is there another definition of emergency that would be more appropriate? Would it be preferable for the Commission not to define the term emergency? If not, why not? The Commission further requests comment on whether the proposed list of rules specifying processes for exercising emergency authority in proposed Rule 816(b) is appropriate. Are there any additional processes that should be included? Are there any proposed processes that should not be included? Why or why not?

XIV. Core Principle 8—Timely Publication of Trading Information

Section 3D(d)(8) of the Exchange Act (Core Principle 8) requires SB SEFs to make public timely information on price, trading volume, and other trading data on SB swaps to the extent prescribed by the Commission and to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility.[196] Section 13(m)(1) of the Exchange Act separately authorizes the Commission to make SB swap transaction, volume and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.[197] The Commission has separately proposed rules relating to the reporting and public dissemination of SB swap transaction and pricing data.[198]

To implement Core Principle 8, the Commission is proposing Rule 817. Proposed Rule 817(a) enumerates the requirements of Section 3D(d)(8) of the Exchange Act. Thus, every SB SEF would be required to: (1) Have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF; and (2) make public timely information on price, trading volume, and other trading data on SB swaps, to the extent and in the manner prescribed by the Commission. As noted, the Commission has separately proposed rules relating to the public dissemination of SB swap transaction and pricing data.[199] The Commission is not at this time proposing any additional requirements on SB SEFs relating to the public dissemination of such data.[200]

In addition, proposed Rule 817(b) would require that, if any SB SEF makes available information regarding a SB swap transaction to any person other than a counterparty to the transaction, then the SB SEF must make that information available to all participants on terms and conditions that are fair and reasonable and not unfairly discriminatory. This proposed requirement is designed to prevent a SB SEF from providing information on SB swap transactions to certain persons (other than counterparties) and not to others, or provide such information pursuant to different terms that are not justified. The Commission believes that fair, reasonable, non-discriminatory access to market information is essential to providing a level playing field for all market participants and that the proposed requirement in Rule 817(b) would prevent developments in the SB swap market that could undermine the goal of post-trade price transparency.

Proposed Rule 817(c) would also prohibit a SB SEF from making any information regarding a SB swap transaction publicly available prior to the time a SDR is permitted to do so under proposed Rule 902 of Regulation SBSR under the Act.[201]

The Commission understands, however, that for business reasons counterparties to a SB swap transaction may prefer to have a SB SEF act as its reporting agent for purposes of complying with the counterparty's responsibility under proposed Regulation SBSR to report required transaction information to a registered SDR. Proposed Rule 817(b) therefore would permit a SB SEF, acting as agent, to report transaction information on behalf of a counterparty responsible for submitting transaction information to a registered SDR. Under proposed Rule 817(c), SB SEFs would be permitted to publicly disseminate SB swap transaction information, but could not do so prior to the time SDRs would be permitted to do so under proposed Rule 902 of Regulation SBSR under the Act. Thus, a SB SEF could not publicly disseminate complete transaction reports for block trades (*i.e.,* including the transaction ID and the full notional size) until the times specified in Rule 902(b)(1) through (3).[202]

The Commission believes that its proposed rules for implementation of Core Principle 8 would clarify the extent and manner in which SB SEFs could make information on transactions executed on the SB SEF available in a manner consistent with the requirements of proposed Regulation SBSR. The Commission requests comment on all aspects of proposed Rule 817 with respect to the timely publication of trading information. Additionally, the Commission requests comment on whether the proposed role of SB SEFs in the public dissemination of transaction information is appropriate. Should SB SEF's be able to compete with SDRs for potential customers of transaction data? How, if at all, would the prohibition on dissemination of transaction information in proposed Rule 902 of Regulation SBSR impact the development of the market for SB swaps? Should the Commission prohibit

[196] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(8) of the Exchange Act).

[197] *See* Public Law 111–203, § 763(i), (adding Section 13(m) of the Exchange Act).

[198] The Commission recently proposed Regulation SBSR that would require reporting and real-time public dissemination of certain information regarding SB swap transactions. Proposed Regulation SBSR identifies the SB swap information that would be required to be reported and disseminated, establishes reporting obligations, and specifies the time frames for reporting and disseminating. Proposed Regulation SBSR would require a registered SDR to publicly disseminate certain SB swap information that is reported to it in real time. *See* Reporting and Dissemination Release, *supra* note 6.

[199] *Id.*

[200] The rules proposed by the Commission pursuant to Section 13(m) of the Exchange Act would limit the public dissemination of SB swap transaction information by any person other than a registered SDR. Specifically, proposed Rule 242.902(d) of Regulation SBSR would prohibit any person other than a registered SDR from making available to one or more persons (other than a counterparty) information relating to a SB swap before the earlier of: (1) 15 minutes after the time of execution of the SB swap; or (2) the time that a registered SDR publicly disseminates a report of that SB swap. This prohibition on dissemination to one or more persons (other than a counterparty) during such time period would apply to SB SEFs and its participants, as it would to all other persons. *See* Reporting and Dissemination Release *supra* note 6.

[201] The Commission recently proposed Regulation SBSR, which would require reporting and real-time public dissemination of certain information regarding SB swap transactions. Proposed Regulation SBSR identifies the SB swap information that would be required to be reported and disseminated, establishes reporting obligations, and specifies the timeframes for reporting and disseminating. Proposed Regulation SBSR would require a registered SDR to publicly disseminate certain SB swap information that is reported to it in real time. *See* Reporting and Dissemination Release *supra* note 6.

[202] As proposed, subject to some exceptions, Rule 902(b) of Regulation SBSR would prohibit the public dissemination of the complete transaction report of a block trade (including the transaction ID and the full notional size): (1) Executed on or after 5:00 UTC and before 23:00 UTC of the same day, until 7:00 UTC of the following; and (2) executed on or after 23:00 UTC and up to 5:00 UTC of the following day, until 13:00 UTC of that following day.

a SB SEF from disseminating the full size of a block trade after the period specified in Rule 902(d), which could be after 15 minutes, but before a SDR has disseminated the full size of the block trade? Would such a prohibition be necessary? Or is it reasonable to expect that a SB SEF would not disseminate block trade information before a SDR if the SB SEF's market participants did not want dissemination of such information? With respect to data that a SDR is required to disseminate under proposed Rule 902 of Regulation SBSR, would proposed Rule 817(c) be effective in ensuring that SB SEF data feeds do not have any advantage over SDR data feeds? If not, should the proposed rule be revised, and if so, how so? Are SB SEFs likely to sell or otherwise disseminate market data following dissemination of data by a registered SDR? If not, why not?

XV. Core Principle 9—Recordkeeping

Section 3D(d)(9) of the Exchange Act (Core Principle 9) requires SB SEFs to maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years. This Core Principle also requires SB SEFs to report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Exchange Act. In addition, this Core Principle requires the Commission to adopt data collection and reporting requirements for SB SEFs that are comparable to corresponding requirements for clearing agencies and SDRs.

The Commission is proposing Rule 818 setting forth the recordkeeping and reporting obligations of SB SEFs to implement this Core Principle. This proposed rule is comparable to the recordkeeping and reporting obligations of national securities exchanges and ATSs under the Exchange Act.[203]

Proposed Rule 818(a) would require every SB SEF to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records, including the audit trail records, as shall be made and received in the conduct of its business. Proposed Rule 818(b) would require SB SEFs to keep and preserve such documents and other records for a period of not less than five years, the first two years in an easily accessible place. Proposed Rule 818(c) would require SB SEFs to establish and maintain the records necessary to create a meaningful audit trail. Specifically, the Commission proposes that SB SEFs establish and maintain accurate, time-sequenced records of all inquiries, responses, orders, quotations or other trading interest, and transactions that are received by, originated on, or executed on the SB SEF.[204] These records must include the key terms of each inquiry, response, order, quotation or other trading interest or transaction and must document the complete life of each inquiry, response, order, quotation or other trading interest or transaction on the SB SEF, including any modification, cancellation, execution, or any other action taken with respect to such order, inquiry, response, quotation, or transaction.[205] Further, proposed Rules 818(e) and (f) would require a SB SEF to report to the Commission such information as the Commission may, from time to time, determine to be necessary for the Commission to perform its duties under the Exchange Act, and upon request of any representative of the Commission, to promptly furnish to each representative copies of any documents, in such form and manner acceptable to such representative, required to be kept and preserved by the SB SEF pursuant to proposed Rules 818(a) and (b).

The Commission would use the information required under proposed Rules 818(a) through (c) to carry out its oversight responsibility over SB SEFs. The records required to be kept, maintained, and provided to the Commission under these provisions would provide an additional tool to help the Commission to determine whether a SB SEF is operating in compliance with the Exchange Act and the rules and regulations thereunder. The audit trail information required to be maintained under proposed Rule 818(c) would facilitate the ability of the SB SEF and the Commission to examine the complete history of all trading interest entered into and transactions executed on a SB SEF. This audit trail information would help the SB SEF and the Commission to detect and deter fraudulent and manipulative acts and prepare reconstructions of activity on a SB SEF or in the SB swaps market, and generally to understand the causes of unusual market activity.

Proposed Rule 818(d) would require a SB SEF to establish, maintain, and enforce written policies and procedures to verify the accuracy of the transaction data it collects and reports.[206] This requirement is based on the premise that transaction data is only useful if it is accurate. If it is not accurate, then it will not enhance transparency. The SB swaps market participants must be able to trust that the information they receive is accurate in order to make appropriate investment decisions. Further, a SB SEF must have accurate information if it is to effectively carry out its obligations to surveil the market and enforce it rules. Similarly, the Commission must be able to trust that the information it receives is accurate so that it can oversee the market and properly determine whether the SB SEF is carrying out its statutory mandate.

The Commission requests comment on all aspects of proposed Rule 818. Are the documents required to be preserved pursuant to proposed Rule 818(a) appropriate? Are there additional documents that a SB SEF should be required to preserve? Is the proposed time period for record retention appropriate? Should SB SEF's be required to keep such records for a longer or shorter period of time? Are the records required to be preserved to maintain an audit trail pursuant to proposed Rule 818(c) appropriate? Are there additional records that a SB SEF should be required to keep? Should the Commission require SB SEFs to keep audit trail records in a particular format? What are the benefits and drawbacks of allowing each SB SEF to determine its own format to keep audit trail records? Would allowing each SB SEF to determine its own format for the maintenance of an audit trail hamper the Commission's ability to analyze trading activity across multiple SB SEFs? If yes, then how?

Is it appropriate to require SB SEFs to have policies and procedures to verify the accuracy of transaction data? If not, why not? In the absence of such requirements, how should the Commission ensure the integrity of transaction data that originates on or passes through a SB SEF? What are the specific benefits and drawbacks of any suggested approaches?

Proposed Rules 818(e) and (f) require a SB SEF to promptly furnish information and records required to be kept under the Rule to the Commission upon request. What, if any, additional reports or records should be furnished to the Commission upon request? What,

[203] *See, e.g.,* 17 CFR 240.17a–1, 240–17a–3, and 17a–4, and 17 CFR 242.301–03.

[204] *Id.*

[205] *See* proposed Rule 818(c).

[206] Nothing in proposed Regulation SBSR would prohibit a SB SEF from serving as the reporting agent on behalf of the counterparty with the obligation to report a trade to the SDR, if the counterparty effected the trade on the SB SEF. *See* Reporting and Dissemination Release, *supra* note 6.

if any, reports or records should the Commission require on a periodic basis? A SB SEF is required to promptly furnish information to the Commission in a manner that is acceptable to the Commission. Are there particular time or format constraints or challenges that the Commission should be aware of with respect to such requests? Would the recordkeeping and reporting requirements be overly burdensome to SB SEFs? If so, why? Or, should the Commission require SB SEFs to provide the Commission direct electronic access to such information and records? Would such direct access be more or less burdensome to SB SEFs than the proposed requirements? If so, what requirements should the Commission consider limiting to reduce the burdens? What would be the basis, if any, to justify reducing the recordkeeping and reporting requirements for SB SEFs that are, as proposed, comparable to requirements for national securities exchanges that also trade SB swaps?

XVI. Core Principle 10—Antitrust Concerns

Section 3D(d)(10) of the Exchange Act (Core Principle 10) [207] provides that, unless necessary or appropriate to achieve the purposes of the Exchange Act, a SB SEF shall not: (1) Adopt any rules or take any actions that result in any unreasonable restraint of trade, or (2) impose any material anticompetitive burden on trading or clearing. The Commission is proposing to implement this Core Principle in proposed Rule 819 by incorporating the statutory language.[208] The Commission requests comment on all aspects of the proposed Rule 819. What do commenters believe would be a "material anticompetitive burden" on trading and clearing? Should the Commission prescribe specific rules or offer guidance to address such situations?

XVII. Core Principle 11—Conflicts of Interest

Section 3D(d)(11) of the Exchange Act (Core Principle 11) requires a SB SEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving the conflicts of interest.[209] Pursuant to this directive, the Commission is proposing Rule 820 to mitigate conflicts of interest through governance arrangements applicable to SB SEFs.

The Commission recently proposed new Regulation MC as part of its rulemaking [210] mandated by Section 765 of the Dodd-Frank Act.[211] Section 765 of the Dodd-Frank Act requires the Commission to adopt rules to mitigate specified conflicts of interest relating to SB SEFs, security-based swap clearing agencies, and SBS exchanges.[212] As the Commission explained in the Regulation MC Proposing Release, a conflict of interest could arise when a small number of market participants exercise control or influence over a SB SEF, either through ownership of voting interests or participation in the governance of the SB SEF. When a small group of market participants also dominate much of the trading in SB swaps, control of a SB SEF by these participants raises a heightened concern. Such market participants, through ownership interest in or influence over the governance of a SB SEF, potentially could exercise their influence to limit the number of direct participants in the SB SEF and restrict the scope of SB swaps that are listed for trading on a SB SEF in an effort to limit competition and increase their ability to maintain higher profit margins.[213] The Commission also believes that a SB SEF's ownership and governance structure could create an incentive for behaviors that would promote its owners' commercial interests over its market oversight responsibilities.[214] Each of these potential conflicts of interest could limit the benefits of centralized trading in the SB swap market and potentially undermine the mandatory trading requirement in Section 3C(h) of the Exchange Act, thereby negatively affecting efficiency and competition in the SB swap markets.[215]

Accordingly, the Commission proposed in Regulation MC to, among other things, impose a 20% limit on ownership (based on interests entitled to vote) and voting interest by any direct participants of SB SEFs; require the board of a SB SEF be composed of a majority of independent directors; require a fully independent nominating committee; require a fully independent ROC; and require the SB SEF to inform the Commission when a recommendation of the ROC is not implemented by the board.[216]

As discussed above, in this proposal, the Commission is proposing rules relating to impartial access to SB SEFs and a review process for those SB swaps to be traded on a SB SEF, that are designed to work together with Regulation MC to help mitigate potential conflicts of interest.[217] As described in this section, the Commission also is proposing additional governance rules that are designed to mitigate potential conflicts of interest.[218] The proposed rules in this proposal—regarding both impartial access and governance—seek to address the same conflicts of interest issues as identified in proposed Regulation MC, but using different mechanisms. The Commission will consider both rulemaking proposals as a whole, including how they interact with each other, when considering how best to address these conflicts of interest issues. As requested in detail below, in reviewing the proposed rules, commenters are encouraged to do the same.

The Commission's proposal for SB SEFs is informed by the Commission's experience with national securities exchanges. Historically, national securities exchanges were owned by their members and were structured as

[207] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(10) of the Exchange Act).

[208] As discussed further in Section XVII below, the Commission proposed a number of requirements in Regulation MC designed to mitigate conflicts of interest relating to SB SEFs. The additional rules the Commission is proposing herein are designed to work together with proposed Regulation MC to help mitigate potential conflicts of interest, as identified in the Regulation MC Proposing Release. In addition, as discussed in Section XVII, the Commission is proposing governance rules that also are designed to help mitigate potential conflicts of interest relating to SB SEFs.

The Commission notes that the statutory language of Section 3D(d)(10)(B) of the Exchange Act differs somewhat from the requirements in the Exchange Act relating to national securities exchanges. Section 6(b)(8) of the Exchange Act, 15 U.S.C. 78f(b)(8), requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[209] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(11) of the Exchange Act).

[210] *See* Regulation MC Proposing Release, *supra* note 82.

[211] *See* Public Law 111–203, § 765.

[212] *Id.*

[213] *See* Regulation MC Proposing Release, 75 FR at 65890, *supra* note 82.

[214] The Commission notes that an entity that registers as a SB SEF would have oversight responsibility over its market pursuant to the Exchange Act (as amended by the Dodd-Frank Act), and rules adopted thereunder. *See* Public Law 111–203, § 763(c). Similarly, all national securities exchanges, including those that may post or make available for trading SB swaps, have oversight responsibilities over their markets and their members pursuant to the Exchange Act. *See* Section 6 of the Exchange Act, 15 U.S.C. 78(f).

[215] *See* Public Law 111–203, § 763(a). Section 3C(h) of the Exchange Act imposes a mandatory trading requirement, which provides that counterparties shall execute a transaction in a SB swap subject to the clearing requirement of Section 3C(a)(1) on an exchange or a registered SB SEF or a SB SEF that is exempt from registration pursuant to Section 3D(e).

[216] *See* Regulation MC Proposing Release, *supra* note 82.

[217] *See supra* Sections VI and VII.

[218] *See* proposed Rule 820.

not-for-profit or similar organizations.[219] With the advent of shareholder-owned exchanges, the Commission became concerned that the introduction of a class of owner that does not trade on the exchange could exacerbate the possibility that an exchange would put its commercial interests ahead of its responsibilities as a regulator.[220] The Commission also recognizes the potential for any person that directly or indirectly controls an exchange or facility thereof to direct its operation so as to cause the exchange to neglect its regulatory obligations under the Exchange Act or to improperly interfere with or restrict the ability of the Commission to effectively carry out its oversight responsibilities.[221]

The Commission has considered the conflicts between an exchange's regulatory responsibilities and its commercial interests in operating a marketplace for the trading of securities.[222] To address these types of concerns, the Commission has approved proposed procedures, consistent with the requirements of Section 6 of the Exchange Act,[223] for an approach to mitigate conflicts of interest for national securities exchanges through the Commission's review of proposals by exchanges with respect to their ownership [224] and governance structures (generally from member-owned to shareholder-owned organizations) or of applications by entities to register as national securities exchanges.[225] In its review, the Commission has examined the way in which an exchange addresses certain governance principles. Among other things, the Commission looks to assure that an exchange provides fair representation of members in the selection of directors and the administration of its affairs, and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer, consistent with the requirement in Section 6(b)(3) of the Exchange Act.[226]

To complement the governance requirements proposed in Regulation MC, the Commission proposes additional substantive requirements with respect to the governance of SB SEFs that are designed to address the conflict of interest concerns identified above. The Commission proposes that SB SEF participants be provided "fair representation" in the selection of directors of the SB SEF and administration of its affairs. Thus, the proposed rule would require the rules of a SB SEF to assure a fair representation of its participants [227] in the selection of its directors and administration of its affairs, but no less than 20% of the total number of directors of the SB SEF must be selected by the SB SEF's participants.[228] The Commission preliminarily believes that the proposed 20% requirement strikes a proper balance by giving SB SEF participants a practical voice in the governance of the SB SEF and the administration of its affairs, without undermining the overall independence of the Board.[229]

To ensure that SB SEF participants truly have a voice in the selection of directors, the Commission also proposes that SB SEF participants be permitted to participate in the nomination process of such representative directors, with the right to petition for alternative candidates. The proposed rule would require the rules of a SB SEF to establish a fair process for SB SEF participants to nominate an alternative candidate or candidates to the Board by petition and the percentage of SB SEF participants that is necessary to put forth such alternative candidate or candidates.[230] A SB SEF would have some flexibility in implementing a fair process for members to select Board candidates.[231] In adopting such rules, a SB SEF should endeavor to strike an appropriate balance that provides SB SEF participants a practical mechanism to put forth alternative candidates, without jeopardizing the overall integrity of the nominating process. The SB SEF participant candidates, of course, would

[219] A "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules. *See* Section 3(a)(3)(A) of the Exchange Act, 15 U.S.C. 78c(a)(3)(A).

[220] *See, e.g.,* Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (order approving the demutalization of CBOE) ("Exchange Act Release No. 62158").

[221] Because ATSs do not have the regulatory obligations that are required of national securities exchanges under the Exchange Act, the Commission has not to date required ATSs to have governance structures that are similar to those of national securities exchanges.

[222] The Commission's recognition of potential conflicts of interest at exchanges and its approach to date in reviewing and approving measures designed to mitigate those conflicts of interest are a useful point of reference as the Commission identifies and develops proposals to mitigate the conflicts of interest potentially faced by SB SEFs as the trading of SB Swaps moves to regulated markets. However, the Commission recognizes that a SB SEF's regulatory obligations are not the same as a national securities exchange's regulatory obligations.

[223] *See* Section 6(b) of the Exchange Act, 15 U.S.C. 78f(b).

[224] The Commission is not proposing rules with respect to ownership and voting limitations for SB SEFs as part of this rulemaking. The Commission has proposed ownership and voting limitations for participants in a SB SEF, as well as for participants in a SBS exchange, as part of Regulation MC. *See* proposed Rule 702 of Regulation MC.

[225] *See, e.g.,* Exchange Act Release No. 62158, *supra* note 220; Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (In the Matter of the Applications of EDGX Exchange, Inc., and EGDA Exchange, Inc. for Registration as National Securities Exchanges; Findings, Opinion, and Order of the Commission) ("Exchange Act Release No. 61698"); Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (In the Matter of the Application of BATS Exchange, Inc. for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission) ("Exchange Act Release No. 58375"); and Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving the merger of NYSE and Archipelago and NYSE's demutualization).

[226] 15 U.S.C. 78f(b)(3). Specifically, Section 6(b)(3) of the Exchange Act requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs, and must provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer. 15 U.S.C. 78f(b)(3). Pursuant to Section 6(b)(3), the Commission has approved SRO rules requiring that at least 20% of the directors on the board be selected by exchange members, as well as SRO rules requiring that exchange members be permitted to participate in the nomination process of such representative directors, with the right to petition for alternative candidates. *See, e.g.,* Exchange Act Release No. 58375, 73 FR at 49500, *id* .

[227] *See* proposed Rule 800 (defining the term "participant" as a person that is permitted to directly engage in or effect transactions on the SB SEF).

[228] *See* proposed Rule 820(a). The Commission notes that national securities exchanges have established a 20% member director requirement for their boards of directors. *See, e.g.,* EDGX Exchange, Inc. Amended and Restated Bylaws, Article III, Section 2(a)(iv) and BATS Y-Exchange Amended and Restated by-Laws Article III, Section 2(b)(ii).

The Commission proposes to define the term "Board" as the Board of Directors or Board of Governors of the SB SEF or any equivalent body. *See* proposed Rule 800 under Regulation SB SEF. The proposed definition is substantially identical to that proposed in the Regulation MC Proposing Release with respect to SB SEFs. *See supra* note 82.

[229] Proposed Regulation MC would require that a Board of a SB SEF be composed of a majority of independent directors. *See* proposed Rule 702(c)(1) under proposed Regulation MC and the Regulation MC Proposing Release, *supra* note 82.

[230] *See* proposed Rule 820(c).

[231] The Commission notes that national securities exchanges have implemented the 20% member director requirement by various means. For example, the BATS Y-Exchange, Inc. has a separate member nominating committee that will nominate candidates for each member representative director position on the exchange's board. BATS Global Markets, as the sole shareholder of BATS Y-Exchange, Inc., will elect those candidates nominated by the member nominating committee as member representative directors. *See* BATS Y-Exchange Amended and Restated by-Laws Article III, Section 4.

be required to satisfy all relevant eligibility criteria for directors.

Further, the Commission proposes that SB SEF participant-owners be restricted in their ability to participate in the "fair representation" process. The rules of a SB SEF would therefore require the SB SEF to preclude any SB SEF participant, or any group or class of participants, either alone or together with its related persons, that beneficially owns, directly or indirectly, an interest in the SB SEF from dominating or exercising disproportionate influence in the selection of the fair representation directors if the participant or participants may thereby dominate or exercise disproportionate influence in the selection or appointment of the entire Board.[232] For example, if a group of five participants together owned the SB SEF and, as a result of such ownership, were effectively able to select the directors on the Board of the SB SEF, those owners would be precluded from also being the fair representation directors on the Board. The Commission believes that such a requirement should help mitigate any conflicts of interest that may arise between SB SEF participants who are also owners of the SB SEF. Given the nature of the conflict concerns for the trading of SB swaps and the structure of the SB swaps market—namely, the dominance by a small group of dealers and the concerns with respect to undue influence in the operation of the SB SEF[233]—the Commission believes that it is necessary and appropriate for the Commission to require that a SB SEF take means to prevent a SB SEF participant or group of participants from exerting undue influence in the nomination and selection of the entire Board.

Finally, the Commission proposes that at least one director on the Board of a SB SEF shall be representative of investors who are not SB swap dealers or major SB swap participants and such director must not be a person associated with a SB SEF participant.[234] The Commission believes that requiring representation by investors who are not SB swap dealers or major SB swap participants, or associated with SB SEF participants, would provide an important perspective to the governance and administration of a SB SEF. Investor directors could provide unique and different perspectives from dealers and other participants of the SB SEF, which should enhance the ability of the Board to address issues in an impartial fashion and consequently support the integrity of a SB SEF's governance.

The Commission believes that the proposed governance requirements, described above, are important to help ensure that all SB SEF participants and investors have a voice in the administration and governance of the SB SEF. The proposed requirements should reduce the possibility that a single group of market participants has the ability to unfairly disadvantage other market participants through the SB SEF governance process. Moreover, the proposed requirements for SB SEFs would be consistent with Exchange Act requirements for national securities exchanges.[235] The Commission believes that similar requirements for SB SEFs would help to minimize conflicts of interest in the SB SEF decision-making process.

The Commission requests comments on all aspects of the proposed rules related to governance of the SB SEF. Are there provisions of the proposed rules that are unnecessary or are there other provisions that should be added? If so, why? Are there aspects of the proposed rules that would be difficult for SB SEFs to implement and, if so, why would that be the case?

Should the Commission adopt compositional requirements to provide certain constituencies a guaranteed voice in the selection of the SB SEF's directors and the administration of its affairs, in addition to those proposed? For example, the proposed "fair representation" requirement relates to the fair representation of a SB SEF's participants. Should the requirement instead specifically require fair representation of specific categories of participants, such as SB swap dealers and major SB swap participants? Are there constituencies that commenters believe should be entitled to representation in the election of the Board of a SB SEF that are not addressed in this proposal?

Should the "fair representation" proposal be broadened to include non-participant dealers? Would representation by non-participant dealers be useful to help assure that SB SEFs implement rules and procedures that are designed to provide impartial access? If commenters believe that such representation should be required, should non-participant dealers be provided representation in addition to any required independent directors,[236] or should they be a subset of independent directors?

Are the provisions relating to the "fair representation" requirements appropriate? Should the proposed 20% minimum threshold for "fair representation" be higher or lower? Do commenters agree that it is appropriate for a SB SEF to restrict the ability of a SB SEF participant that is also an owner to dominate or exercise influence in the selection of "fair representation" directors, particularly if the SB SEF would thereby dominate the selection or appointment of the entire Board? If not, why not? If so, why? Is the proposed rule's requirement that the Board include at least one investor representative appropriate? Should SB SEFs be required to have more than one investor representative on its Board? If so, how many, and why?

Should the Commission require a specific percentage of the total number of SB SEF participants to put forth alternative member candidate or candidates by petition that would be required to be set forth in the SB SEF's rules? If so, what percentage would be appropriate? In the SRO Governance Proposing Release, the Commission proposed a threshold of 10% as the percentage of members necessary to put forth an alternative member candidate or candidates for the exchange board of directors.[237] Would a 10% threshold be appropriate for SB SEFs as well? Should investors who are not SB SEF participants be provided with further representation in the governance and administration of a SB SEF beyond representation on the SB SEF Board? [238]

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[232] *See* proposed Rule 820(a).

[233] For further discussion of the current structure of the SB swaps market, *see* the Regulation MC Proposing Release, *supra* note 82, at Section III.B.

[234] *See* proposed Rule 820(b). The term "person associated with a participant" is proposed to mean any partner, officer, director, or branch manager of such participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such participant, or any employee of such participant. *See* proposed Rule 800. The proposed definition is substantially identical to the definition of "person associated with a security-based swap execution facility participant" that has been proposed under Regulation MC. *See* proposed Rule 700(t) under Regulation MC and Regulation MC Proposing Release, *supra* note 82.

[235] *See* Section 6(b)(3) of the Exchange Act, 15 U.S.C. 78f(b)(3).

[236] *See* Regulation MC Proposing Release, *supra* note 82.

[237] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) at 71137–71138. *See also, e.g.,* NASDAQ Stock Market LLC, Bylaws, Article II, Section 1(b)(ii) stating that Nasdaq members may submit a petition in support of an alternate candidate (*i.e.,* candidate not selected by the nominating committee) provided that the petition is executed by "10% or more of all Nasdaq Members."

[238] *See* discussion *supra* at Section VIII.B discussing proposed Rule 811(c)(2), which would provide that the SB SEF must establish a swap review committee that would provide for the fair representation of participants of the SB SEF and

Continued

Should the Commission require SB SEFs to have a participation committee that would, for example, determine the standards and requirements for participant eligibility and review denials of participation applications? If so, should there be any requirements as to the composition of such a committee? For example, should any such committee be required to have a majority of independent directors? Would some other percentage of independence be appropriate for a participation committee? Should the Commission require investor representation on a participation committee? If so, should the Commission require a minimum percentage of investor representation and if so what percentage and why?

As noted above, various provisions of proposed Regulation SB SEF, such as the impartial access requirements of proposed Rule 811(b) and the governance requirements of proposed Rule 820 are intended to be complementary measures, along with proposed Regulation MC, designed to mitigate conflicts of interest for SB SEFs. The Commission seeks commenters' views regarding the interaction of proposed Regulation SB SEF with proposed Regulation MC. Taking into account both proposals, commenters should address whether the proposals contained in Regulation SB SEF would appropriately address conflicts of interest concerns or whether they should be revised either as unnecessary or insufficient to address conflicts of interest. Are there any redundancies or gaps for mitigating conflicts of interest that should be addressed?

In reviewing proposed Rule 820 specifically, commenters are asked to consider how this proposed rule would work together with Regulation MC. Are the requirements of proposed Rule 820 and the requirements of Regulation MC mutually supportive? Are any of the requirements of proposed Rule 820 redundant with, or otherwise unnecessary in light of, the proposed requirements of Regulation MC? Are there additional or different measures that the Commission should take to mitigate conflicts of interest? For example, should the Commission require SB SEFs to make publicly available, or available to the Commission but not to the public, Board and committee decisions with respect to the listing of SB swaps? Should the Commission require that the independent directors of the Board conduct and submit to the Commission, or make publicly available, an annual governance self-assessment, which would include ways in which the SB SEF addressed conflicts of interest? If so, are there particular areas that should be the focus of any such annual governance self-assessment? What would be the benefits and drawbacks of any such annual governance self-assessment? Should proposed Form SB SEF require SB SEFs to provide details about the background of each independent director and why it believes that each independent director qualifies as independent? [239]

A number of commenters on Regulation MC raised concerns about the overall approach of, and the proposed requirements in, Regulation MC and expressed a range of views.[240] Several other commenters on Regulation MC, however, generally supported the overall approach to mitigate conflicts of interest and expressed a range of views on the proposed requirements.[241] In particular, the Commission notes that some commenters who have submitted comment letters on proposed Regulation MC raised additional sources of conflicts to consider.[242] These commenters suggested that the Commission should focus on conflicts arising from dealers directing volume to SBS exchanges and SB SEFs, dealer concentration of market activity, and close association of the dealers with decision-making in SBS exchanges and SB SEFs. Namely, the commenters believed that the Commission should address the incentives SB SEFs and SBS exchanges may use to attract business, such as volumetric or profit-based incentives. The commenters argued that if arrangements to attract large liquidity providers' business are overly generous, such arrangements may undermine any improvements made by the proposed voting and ownership limitations and governance requirements in Regulation MC. Do commenters agree with these concerns? If not, why not? If so, do commenters believe that the Commission should take any measures to mitigate these concerns? For example, should the Commission prohibit, or take other measures with respect to, revenue sharing, volume discounts, rebates, and other similar arrangements by a SB SEF to attract order flow? Should SB SEFs be required to file with the Commission any arrangements with participants, potential participants, or other market participants that would promote the sending of order flow to the SB SEF, such as equity incentive plans? Would such requirements help to mitigate conflicts of interest?

XVIII. Core Principle 12—Financial Resources

Section 3D(d)(12)(A) of the Exchange Act (Core Principle 12) requires SB SEFs to have adequate financial, operational, and managerial resources to discharge each responsibility of the SB SEF, as determined by the Commission. In addition, Section 3D(d)(12)(B) of the Exchange Act states that the financial resources of a SB SEF shall be considered to be adequate if the value of the financial resources (i) enables the organization to meet its financial obligations to its members and

other market participants, such that each class of participant and other market participants would be given the right to participate in such committee and no single class of participant or category of market participant would predominate.

[239] *See* Section XXII for a description of proposed Form SB SEF, which would require the disclosure of certain information relating to directors of an SB SEF. Proposed Exhibit C to Form SB SEF would require that an applicant provide a list of the officers and directors of the SB SEF, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, and a list of all standing committees and their members, indicating the following for each: their name and title; date of commencement and termination of term of office or position; the type of business in which each is primarily engaged (*e.g.,* SB swap dealer, major SB swap participant, inter-dealer broker, end-user *etc.*); and, if such person is a director, whether such director qualifies as an "independent director" pursuant to proposed Rule 800 under Regulation SB SEF and whether such director is a member of any standing committees or committees that have the authority to act on behalf of the Board or the nominating committee.

[240] *See, e.g.,* Letter from Nancy C. Gardner, Executive Vice President & General Counsel, Thomson Reuters Markets, to Elizabeth M. Murphy, Secretary, Commission, dated November 24, 2010, Letter from Lee H. Olesky, Chief Executive Officer, and Douglas L. Friedman, General Counsel, Tradeweb Markets LLC, to David A. Stawick, Secretary, CFTC, dated November 17, 2010, and Letter from Ernest C. Goodrich, Jr., Managing Director, Deutsche Bank AG, and Marcelo Riffaud, Managing Director, Deutsche Bank AG, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated November 8, 2010.

[241] *See, e.g.,* Letter from U.S. Department of Justice, Antitrust Division, In the Matter of: RIN 3235–AK47, File No. S7–27–10, dated December 28, 2010, Letter from Mark Scanlan, Vice President, Agriculture and Rural Policy, Independent Community Bankers of America, to Elizabeth M. Murphy, Secretary, Commission, dated November 26, 2010, and Letter from Laurel Leitner, Senior Analyst, Council of Institutional Investors, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2010.

[242] Letter from U.S. Senator Carl Levin, Michigan, to Elizabeth M. Murphy, Secretary, Commission, dated December 20, 2010; Letter from Dennis M. Kelleher, President & CEO, and Wallace C. Turbeville, Derivatives Specialist, Better Markets, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated November 26, 2010; Letter from U.S. Senator Sherrod Brown, Ohio, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated November 17, 2010; Letter from U.S. Senator Tom Harkin, Iowa, to Elizabeth M. Murphy, Secretary, Commission, and David A. Stawick, Secretary, CFTC, dated November 17, 2010; and Letter from Americans for Financial Reform, to Elizabeth M. Murphy, Secretary, Commission, dated November 16, 2010.

participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and (ii) exceeds the total amount that would enable the SB SEF to cover the operating costs of the SB SEF for a one year period, as calculated on a rolling basis. The Commission believes that the financial strength of a SB SEF is vital to ensure that a SB SEF can discharge its regulatory responsibilities in accordance with the Exchange Act. Strong, viable SB SEFs will be a key to market continuity and efficiency. Therefore, the Commission believes that it is important to install safeguards to ensure that a SB SEF's resources are adequate.

The Commission proposes to implement in proposed Rule 821 the requirements of Section 3D(d)(12) of the Exchange Act. Specifically, proposed Rule 821(a) would require every SB SEF to have adequate financial, operational, and managerial resources to discharge each responsibility of the SB SEF, as determined by the Commission. Proposed Rule 821(b) would state in part that the financial resources of a SB SEF shall be considered to be adequate if the value of the financial resources enables the SB SEF to meet its financial obligations to participants notwithstanding a default by the participant creating the largest financial exposure for the SB SEF in extreme but plausible market conditions. This requirement would help ensure that the financial failure of one participant would not be able to destroy the financial viability of the entire SB SEF. Proposed Rule 821(b) would require that in making this calculation (which is required by Section 3D(d)(12)(B) of the Exchange Act), a SB SEF shall use reasonable estimates and assumptions and not overestimate resources or underestimate expenses, liabilities, and financial exposure. This requirement should provide guidance to SB SEFs on the estimates they should use to comply with the requirements of Core Principle 12.

Proposed Rule 821(b) also would state in part that the financial resources of a SB SEF shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the SB SEF to cover its operating costs for a one year period, as calculated on a rolling basis. This test would help to ensure that a SB SEF is in a sufficiently strong financial position to sustain operations through unpredictable business cycles. As with the first requirement, in making this calculation (which is required by Section 3D(d)(12)(B) of the Exchange Act), a SB SEF must use reasonable assumptions and estimates and not overestimate resources or underestimate expenses, liabilities, and financial exposure. Each of these requirements would be an ongoing requirement and a SB SEF must always be in compliance.[243] The Commission seeks comments in general regarding all aspects of these financial requirements.

XIX. Core Principle 13—Systems Safeguards

Section 3D(d)(13)(A) of the Exchange Act (Core Principle 13) requires that a SB SEF shall establish and maintain a program of risk analysis and oversight to identify and minimize sources of operations risk, through the development of appropriate controls and procedures, and automated systems, that: (1) Are reliable and secure and (2) have adequate scalable capacity. Additionally, Section 3D(d)(13)(B) of this Core Principle requires that a SB SEF establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for: (1) Timely recovery and resumption of operations and (2) the fulfillment of the responsibilities and obligations of the SB SEF. Further, Section 3D(d)(13)(C) of this Core Principle requires that a SB SEF shall periodically conduct tests to verify that the backup resources of the SB SEF are sufficient to ensure continued: (1) Order processing and trade matching, (2) price reporting, (3) market surveillance, and (4) maintenance of a comprehensive and accurate audit trail. The Commission is proposing Rule 822 to implement this Core Principle.

The Commission is proposing Rule 822 to provide standards for SB SEFs with regard to their automated systems' capacity, resiliency, and security.[244] These standards are comparable to the standards applicable to SROs, including national securities exchanges and clearing agencies, pursuant to the Commission's Automation Review Policy ("ARP") standards.[245] Systems failures can limit access to quotes or other trading interest, call into question the integrity of quotes or other trading interest, and prevent market participants from being able to post quotes or other trading interest, and thereby have a large impact on market confidence, risk exposure, and market efficiency. To promote the maintenance of stable and orderly SB swap markets, the Commission believes that SB SEFs should be required to meet the ARP capacity, resiliency and security standards.[246]

Proposed Rule 822 would require a SB SEF to establish, maintain, and enforce written policies and procedures designed to ensure that its systems provide adequate levels of capacity, resiliency, and security; and submit to the Commission annual reviews of its automated systems, systems outage notices, and prior notices of planned system changes. These proposed requirements essentially codify and parallel the ARP requirements that have been in place for almost twenty years. Commission staff has found these standards to be effective in overseeing the capacity, resiliency, and security of major automated systems in use in the securities markets. These proposed requirements, as applied to the market for SB swaps, are designed to prevent and minimize the impact of systems failures that might negatively impact the stability of this market.

A. Requirements for SB SEFs' Automated Systems

1. Policies and Procedures

Proposed Rule 822(a)(1) would require a SB SEF to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security. Such policies and procedures would require a SB SEF to, at a minimum: (1) Establish reasonable current and future capacity estimates; (2) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner; (3) develop and implement reasonable procedures to review and keep current its system development and testing methodology; (4) review the

[243] In addition to the requirements of proposed Rule 821, a SB SEF would be required to submit annual financial reports in accordance with the requirements discussed in Section XXII of this release.

[244] Proposed Rule 822 is being promulgated under Section 3D(d)(13) of the Exchange Act.

[245] *See* Securities Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703, 48706–48707 (November 24, 1989) ("ARP I Release") and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II Release"). *See also* Rule 301(b)(6) of Regulation ATS, 17 CFR 242.301(b)(6) and Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998).

[246] Because SB SEFs would be an integral part of the market for SB swaps, and therefore an integral part of the national market system, the Commission believes that it is appropriate to model a SB SEF's rules on system safeguards on ARP. Proposed Rule 822 will impose data maintenance standards on SB SEFs that are comparable to those imposed by the Commission on national securities exchanges by applying the ARP standards to them. In addition, nearly identical rules have been proposed by the Commission for SDRs, also applying the ARP standards to those entities. *See* SDR Release, *supra* note 6.

vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and (5) establish adequate contingency and disaster recovery plans which shall include plans to resume trading of SB swaps by the SB SEF no later than the next business day following a wide-scale disruption. In developing such contingency and disaster recovery plans, the SB SEF would be required to take into account: (1) The extent of alternative trading venues for the SB swaps traded by the SB SEF, including the number of SB swaps traded on the SB SEF, the market share of the SB SEF, and the number of participants in its SB SEF; and (2) the necessity of geographic diversity and diversity of infrastructure between the SB SEF's primary site and any back-up sites.

This list of proposed requirements is based on existing ARP requirements applied to significant-volume ATSs under Rule 301(b)(6) of Regulation ATS.[247] In addition, Commission staff has applied these requirements to SROs and other entities in the securities markets for a number of years in the context of its ARP inspection program.

As a general matter, the Commission preliminarily believes that, if a SB SEF's policies and procedures satisfy industry best practices standards, then these policies and procedures would be adequate for purposes of proposed Rule 822(a)(1).[248] However, in the event that industry best practices standards of widely recognized professional organizations are not consistent with the public interest, protection of investors, or the maintenance of fair and orderly markets, the Commission would have flexibility to establish such standards that a SB SEF would be required to meet to comply with proposed Rule 822(a)(1).[249]

The proposed rule would require a SB SEF to quantify, in appropriate units of measure, the limits of the SB SEF's capacity to receive (or collect), process, store, or display the data elements included within each function, and identify the factors (mechanical, electronic, or other) that account for the current limitations.[250] This would make it easier for the Commission to detect any potential capacity constraints of a SB SEF, which, if left unaddressed, could compromise the ability of a SB SEF to collect and maintain SB swap data. A SB SEF's failure to clearly understand and have procedures to address its capacity limits would increase the likelihood that it would experience a loss or disruption of system operations.

2. Objective Review

Proposed Rule 822(a)(2) would require a SB SEF to submit an objective review of its systems that support or are integrally related to the performance of its activities to the Commission, on an annual basis, within thirty calendar days of completion. This proposed requirement is critical to help ensure that SB SEFs have adequate capacity, resiliency, and security and that their automated systems are not subject to critical vulnerabilities. Proposed Rule 800 would define "objective review" as "an internal or external review, performed by competent, objective personnel following established procedures and standards, and containing a risk assessment conducted pursuant to a review schedule."[251] The proposed definition of "objective review" is based on the standard for the review of automated systems set forth in the ARP II Release.[252]

As in the current ARP program, the Commission preliminarily believes that a reasonable basis for determining that a review is objective for purposes of proposed Rule 822(a)(2) is if the level of objectivity of a SB SEF's reviewers complied with standards set by widely recognized professional organizations.[253] However, in the event that industry best practices standards of widely recognized professional organizations are not consistent with the public interest, protection of investors, or the maintenance of fair and orderly markets, the Commission would have flexibility to establish standards that a SB SEF would be required to meet to comply with proposed Rule 822(a)(2).

The decision on which type of reviewer, an internal department or an external firm, should perform the review is a decision for each SB SEF to make. The Commission preliminarily believes that, as long as the reviewer has the competence, knowledge, consistency, and objectivity sufficient to perform the role, the review can be performed by either recognized information technology firms or by a qualified internal department knowledgeable of information technology systems.

Proposed Rule 822(a)(2) would further require that, where the objective review is performed by an internal department, an objective, external firm must assess the internal department's objectivity, competency, and work performance with respect to the review performed by the internal department. Proposed Rule 822(a)(2) would require that the external firm issue a report of that review, which the SB SEF must submit to the Commission on an annual basis, within thirty calendar days of completion of the review.

The proposed requirement in proposed Rule 822(a)(2) that a SB SEF submit an annual objective review to the Commission is drawn from the ARP II Release.[254] In addition, the proposed requirement in proposed Rule 822(a)(2) that, where the objective review is performed by an internal department, an objective, external firm must assess the internal department's objectivity, competency, and work performance, is similarly drawn from the ARP II Release.[255]

The proposed annual review would not be required to address each element contained in proposed paragraphs (i) through (v) of Rule 822(a)(1) every year.

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[247] *See* 17 CFR 242.301(b)(6)(D)(ii).

[248] Proposed Rule 822(a)(1) would require a SB SEF to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security. A SB SEF's policies and procedures may still meet the requirement to be reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security without necessarily being identical to industry best practices standards. However, generally speaking, industry best practices standards would provide an objective, easily identifiable standard.

[249] Industry best practices standards currently are established by organizations such as: the Information Systems Audit and Control Foundation ("ISACF"); the Federal Financial Institutions Examination Council's ("FFIEC"); the Institute of Internal Auditors ("IIA"); and the SANS Institute.

[250] *See* proposed Rule 822(a)(1)(i).

[251] Proposed Rule 800 would define "competent, objective personnel" as "a recognized information technology firm or a qualified internal department knowledgeable of information technology systems." This proposed definition is based on the standard for reviewers of automated systems set forth in the ARP II Release. *See* ARP II Release, 56 FR 22490, *supra* note 245. Proposed Rule 800 would define "review schedule" as "a schedule in which each element contained in paragraph (a)(1) of Rule 822 would be assessed at specific, regular intervals." This proposed definition codifies the Commission's policy set forth in the ARP II Release. *See* ARP II Release, 56 FR 22490, *supra* note 245.

[252] *See* ARP II Release, 56 FR 22490, *supra* note 245.

[253] Such standards are currently established by organizations such as the IIA, the Information Systems Audit and Control Association ("ISACA") (formerly the Electronic Data Processing Auditors Association ("EDPAA")), and the American Institute of Certified Public Accountants ("AICPA").

Proposed Rule 822(a)(2) would require a SB SEF to submit an objective review of its systems that support or are integrally related to the performance of its activities to the Commission, on an annual basis, within thirty calendar days of completion. A SB SEF's policies and procedures may still meet this requirement without necessarily being identical to industry best practices standards. However, generally speaking, industry best practices standards would provide an objective, easily identifiable standard.

[254] *See* ARP II Release, 56 FR 22490, *supra* note 245.

[255] *See id.*

Rather, using its own risk assessment, a SB SEF's reviewer would review each element on a "review schedule," as defined in proposed Rule 800, in which each element would be assessed at specific, regular intervals, thus facilitating systematic and timely review of each element. This should provide a reasonable and cost-effective level of assurance that automated systems of SB SEFs are being adequately developed and managed with respect to capacity, security, development, and contingency planning concerns.

The proposed requirement to submit an objective review within thirty days of completion assures the Commission will have timely notice of the information required. The Commission has found through its experience with the current ARP program for SROs and other entities in the securities market that an entity generally requires approximately thirty calendar days after completion of the review to complete the internal review process necessary to submit an annual review to the Commission. A shorter timeframe might not provide a SB SEF with sufficient time to complete its internal review of the document; a longer timeframe might serve to encourage unnecessary delays.

3. Material Systems Outages

Under proposed paragraph (3) of Rule 822(a), a SB SEF would be required to promptly notify the Commission in writing of material system outages and any remedial measures that have been implemented or are contemplated, including: (1) Immediately notifying the Commission when a material systems outage is detected; (2) immediately notifying the Commission when remedial measures are selected to address the material systems outage; (3) immediately notifying the Commission when the material systems outage is addressed; and (4) submitting to the Commission within five business days of when the material systems outage occurred a detailed written description and analysis of the outage and any remedial measures that have been implemented or are contemplated.

This paragraph would codify the procedures followed by SROs and certain other entities under the Commission's current ARP program with respect to providing the staff with notification of material system outages. In particular, proposed paragraph (3) would clarify that the Commission expects to receive immediate notification that an outage has been detected, that remedial measures have been selected to address the outage, and that the outage has been addressed. Proposed paragraph (3) also would clarify that a SB SEF should submit a detailed written description and analysis of the outage within five business days of the occurrence of the outage.

The Commission preliminarily believes that the proposed rule would assist the Commission in assuring that a SB SEF has diagnosed and is taking steps to correct system disruptions, so that systems of the SB SEF are reasonably equipped to accept and securely maintain transaction data. The Commission preliminarily believes that requiring a SB SEF to submit notifications of material system outages to the Commission is essential to help ensure that the Commission can continue to effectively oversee the SB SEF.

Proposed Rule 800 would define "material systems outage" as an unauthorized intrusion into any system, or an event at a SB SEF involving systems or procedures that results in: (1) A failure to maintain accurate, time-sequenced records of all orders, quotations, and transactions that are received by, or originated on, the SB SEF; (2) a disruption of normal operations, including switchover to back-up equipment with no possibility of near-term recovery of primary hardware; (3) a loss of use of any system; (4) a loss of transactions; (5) excessive back-ups or delays in processing; (6) a loss of ability to disseminate vital information; (7) a communication of an outage situation to other external entities; (8) a report or referral of an event to the SB SEF's Board or senior management; (9) a serious threat to systems operations even though systems operations were not disrupted; (10) a queuing of data between system components or queuing of messages to or from participants of such duration that a participant's normal service delivery is affected; or (11) a failure to maintain the integrity of systems that results in the entry of erroneous or inaccurate inquiries, responses, orders, quotations, other trading interest, transactions, or other information in the SB SEF or the securities markets.

Based on its experience in requiring SROs and other entities to report material systems outages in the context of the current ARP program, the Commission preliminarily believes that this proposed definition is appropriate for SB SEFs. The Commission preliminarily believes that each of the events listed in paragraphs (1) through (11) of proposed Rule 800 are significant events that warrant reporting to the Commission because such material systems outages could negatively impact the stability of the SB swap market. The application of the proposed definition is relatively straightforward, and it focuses on the types of events that the Commission preliminarily believes should require notification to the Commission under proposed Rule 822(a)(3), so that the Commission can respond appropriately to the event that caused the loss or disruption.

Specifically, the Commission preliminarily believes that proposed paragraphs (1), (2), (3), (4), and (5) of proposed Rule 800 address events that cause a significant loss or disruption of normal system operations sufficient to warrant notification to the Commission. In addition, the Commission preliminarily believes that proposed paragraph (6) of proposed Rule 800 addresses a type of event that impairs transparency or accurate and timely regulatory reporting.

The Commission also preliminarily believes that proposed paragraphs (7) and (8) of proposed Rule 800 are appropriate because communications of an outage to entities outside of the SB SEF or to the SB SEF's Board or senior management are indicia of a significant system outage sufficient to warrant notification to the Commission. Specifically, proposed paragraph (8)'s reference to "a report or referral of an event * * *" seeks to address situations in which a SB SEF might seek to apply an overly narrow definition of an "outage situation" in proposed paragraph (7), in order to avoid reporting a problem that nevertheless has a significant impact on the performance of the SB SEF's systems and therefore warrants reporting to the Commission. For example, where a SB SEF experiences a slowing, but not a stoppage, of its ability to accept orders or quotes, and that slowing is sufficiently significant to have been reported or referred to the SB SEF's Board or senior management, the Commission preliminarily believes that this situation would constitute a material system outage under proposed paragraph (8) that must be reported to the Commission. By including proposed paragraph (8) in the definition of "material systems outage," the Commission seeks to ensure that it is informed of events that most entities subject to current ARP standards would already understand should be covered under the current program. This should permit the Commission to effectively monitor the operation of SB SEF's automated systems. The Commission preliminarily believes that proposed paragraphs (9) and (10) are appropriate because threats to system operations and queuing of data are events that may

result in a significant disruption of normal system operations warranting notification to the Commission.

Proposed paragraph (11) of proposed Rule 800 covers a failure to maintain the integrity of systems that results in the entry of erroneous or inaccurate inquiries, responses, orders, quotations, other trading interests, transactions, or other information in a SB SEF or to market participants. This paragraph is designed to address the unique role of SB SEFs in the SB swaps market. In particular, it is intended to cover such events as breakdowns in a SB SEF's internal controls that result in the entry of erroneous orders into the market. For example, it is possible that a SB SEF could, while in the process of testing its systems, inadvertently retain "test" data in its database. This, in turn, could result in erroneous reporting of SB swaps to the SB SEF's participants, registered SDRs, the Commission, other regulators, and counterparties. Counterparties may become uncertain of their positions, leading to market disruptions. This, in turn, could erode investor confidence in the integrity of the SB swaps market, damaging liquidity and impeding the capital formation process. Accordingly, the Commission preliminarily believes that this type of breakdown in a SB SEF's systems controls should be reported to the Commission.

By including proposed paragraph (11) of proposed Rule 800 in the definition of "material systems outage," the Commission is seeking to ensure that it is informed of events that could negatively impact the integrity of systems that result in the entry of erroneous or inaccurate transaction data or other information in a SB SEF or the securities markets. This should permit the Commission to monitor effectively the operation of each SB SEF's automated systems.

The definition of material systems outage also includes an unauthorized intrusion into any system. This includes unauthorized intrusions by outside parties, insiders, or parties unknown. The Commission preliminarily believes that including this in the definition would assist the Commission's review by requiring SB SEFs to notify the Commission of unauthorized intrusions into systems or networks, and should permit the Commission to continue to effectively monitor the operation of SB SEF's automated systems. SB SEFs would need to immediately report unauthorized intrusions regardless of whether the intrusions were part of a cyber attack, potential criminal activity, other unauthorized attempts to retrieve, manipulate or destroy data or to disrupt or destroy systems or networks, or any other malicious activity affecting data, systems, or networks. If unauthorized intrusions were successful in breaching systems or networks, SB SEFs would need to report these intrusions even if the parties conducting the unauthorized intrusion were unsuccessful in achieving their apparent goals (such as the introduction of malware or other means of disrupting or manipulating data, systems, or networks). SB SEFs would need to follow up on their initial reports by sending the Commission updates on any harm to data, systems, or networks as well as any remedial measures that the SB SEFs are contemplating or undertaking to address the unauthorized intrusions. SB SEFs, however, would not need to report unsuccessful attempts at unauthorized intrusions that did not breach systems or networks.

The Commission preliminarily believes that the proposed five business day requirement regarding submission of a written description of material systems outages is an appropriate time period. In the Commission's experience with the current ARP program for SROs and other entities in the securities market, an entity generally requires approximately five business days after the occurrence of a material systems outage to gather all the relevant details regarding the scope and cause of the outage. A shorter timeframe might not provide sufficient time for the SB SEF to gather all relevant details surrounding the outage and describe them in a written submission; a longer timeframe might encourage unnecessary delays.

4. Material Systems Changes

Under proposed paragraph (4) of Rule 822(a), a SB SEF would be required to notify the Commission in writing at least thirty calendar days before implementation of any planned material systems changes. Proposed Rule 800 would define "material systems change" as "a change to automated systems that: (1) Significantly affects existing capacity or security; (2) in itself, raises significant capacity or security issues, even if it does not affect other existing systems; (3) relies upon substantially new or different technology; (4) is designed to provide a new service or function; or (5) otherwise significantly affects the operations of the security-based swap execution facility."

Based on its experience in requiring SROs and other entities to report material systems changes in the context of the current ARP program, the Commission preliminarily believes that this proposed definition is appropriate for SB SEFs. Each of the events listed in paragraphs (1) through (5) are significant events that warrant reporting to the Commission because any of those events can lead to a material systems outage that could negatively affect the stability of the SB swap market. The application of the proposed definition is relatively straightforward, and it focuses on the types of events that should require notification to the Commission under proposed Rule 822(a)(4). Specifically, the proposed paragraphs (1) through (4) are events that concern the adequacy of capacity estimates, testing, and security measures taken by a SB SEF, and thus are sufficiently significant to warrant notification to the Commission. Proposed paragraph (5) covering a change that "otherwise significantly affects the operations of the security-based swap execution facility" is more open-ended in order to require notification of other major systems changes. Examples of changes that fall within proposed paragraph (5) include, but are not limited to: Major systems architectural changes; reconfigurations of systems that cause a variance greater than five percent in throughput or storage; [256] introduction of new business functions or services; material changes in systems; changes to external interfaces; changes that could increase susceptibility to major outages; changes that could increase risks to data security; changes that were, or will be, reported to or referred to a SB SEF's Board or senior management; and changes that may require allocation or use of significant resources.

The Commission preliminarily believes that the proposed thirty calendar day requirement regarding pre-implementation written notification to the Commission of planned material systems changes is an appropriate time period. The Commission has found through its experience with the current ARP program that this amount of time is necessary for the Commission staff to evaluate the issues raised by a planned material systems change. A shorter timeframe might not provide sufficient time for the Commission staff to analyze the issues raised by the systems change; a longer timeframe might unnecessarily delay the covered entity in implementing the change.

[256] The Commission has identified the five percent threshold as triggering the definition of "material systems change" in proposed Rule 800 because, based on experience in administrating the ARP program in the equities markets for almost twenty years, it believes that reconfigurations that exceed five percent in throughput or storage typically have the greatest potential to cause significant disruptions to automated systems.

The Commission requests comment on all aspects of proposed Rule 822(a). Should the Commission consider imposing other requirements or standards? Should any of the proposed requirements be eliminated or refined? If so, please explain your reasoning. Would it be appropriate to impose the proposed systems safeguards requirements on SB SEFs only after they account for a certain percentage of the total volume of transactions, as measured by the aggregate total volume received by all SB SEFs? If so, what is the appropriate volume level? Five percent? Ten percent? Please be specific. In addition, the Commission is mindful of the potential costs of a SB SEF's compliance with the proposed systems safeguards and seeks commenters' views on whether there are ways to minimize those costs while assuring adequate systems safeguards.

Would it be appropriate to delay implementing the proposed systems safeguards requirements on SB SEFs until after a specified period of time, such as one year after Commission approval of the SB SEF's registration? If so, is one year an appropriate time period? If not, what would be an appropriate time period for any delay and why? Would it be appropriate to delay implementation of systems safeguard requirements until either a specified time period after the Commission's approval of the SB SEF's registration and/or a particular volume threshold such as those discussed above is reached? If so, why? If not, why not? Are there other circumstances in which a SB SEF should be excepted from systems safeguards requirements? If so, commenters should provide a rationale.

Are there factors specific to SB swap transactions that would make applying a system that is traditionally used in the equity markets inappropriate? What is the likely impact of these requirements on the SB swaps market, including the impact on the incentives and behaviors of SB SEFs, the willingness of persons to register as SB SEFs, and the technologies used for maintaining SB swap data at the SB SEF?

Should the Commission require a SB SEF's contingency and disaster recovery plans (required in proposed paragraph (a)(1)(v) of proposed Rule 822) to be tested periodically to assure their effectiveness and adequacy? [257] Should the Commission require such contingency and disaster recovery plans to cover at a minimum: Preparation for contingencies through such devices as appropriate remote and on-site hardware back-up and periodic duplication and off-site storage of data files? Off-site storage of up-to-date, duplicative software, files and critical forms and supplies needed for processing operations, including a geographically diverse back-up site that does not rely on same infrastructure components (*e.g.,* transportation, telecommunications, water supply, and electric power) as the SB SEF primary operations center? Immediate availability of software modifications, detailed procedures, organizational charts, job descriptions, and personnel for the conduct of operations under a variety of possible contingencies? Emergency mechanisms for establishing and maintaining communications with participants, regulators and other entities involved? [258]

Should the Commission require a SB SEF's contingency and disaster recovery plans (required in proposed paragraph (a)(1)(v) of proposed Rule 822) to include resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations following any disruption of its operations? If so, what should the recovery time objective be? Should the SB SEF's contingency and disaster plans and resources generally enable resumption of the SB SEF's operations during the next business day following the disruption?

Should the Commission require a SB SEF, to the extent practicable, coordinate its contingency and disaster recovery plans (required in proposed paragraph (a)(1)(v) of proposed Rule 822) with those of the SDRs, clearing agencies, SB swap dealers, and major SB swap participants, and with those of regulators in a manner adequate to enable effective resumption of the SB SEF's operations following a disruption causing activation of the SB SEF's contingency and disaster recovery plans, including participating in periodic, synchronized testing of its contingency and disaster recovery plans?

Should the Commission require a SB SEF ensure that its contingency and disaster recovery plans (required in proposed paragraph (a)(1)(v) of proposed Rule 822) take into account the business continuity-disaster recovery plans of its telecommunications, power, water, and other essential service providers?

Should the Commission require a SB SEF to identify the potential risks that can arise as a result of interoperability and/or interconnectivity with other market infrastructures and venues from which data can be submitted to the SB SEF (such as exchanges, SDRs, clearing agencies, SB swap dealers, and major SB swap participants) and service providers and how the SB SEF mitigates such risks?

Should the Commission require a SB SEF to abide by substantive requirements (in addition to, or in place of, the policies and procedures approach of proposed Rule 822(a)(1)), such as (i) having robust system controls and safeguards to protect the data from loss and information leakage, (ii) having high-quality safeguards and controls regarding the transmission, handling, and protection of data to ensure the accuracy, integrity, and confidentiality of the trade information recorded in the SB SEF, or (iii) having reliable and secure systems and having adequate, scalable capacity?

Should the Commission require a SB SEF to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data that it accepts is from the entity it purports to be from, such as requiring robust passwords?

Are the time periods specified in proposed Rule 822(a)(2) through (4) with respect to submission of annual reviews and written notices of material system outages and material systems changes the correct time periods to use? Should any of the proposed time periods be shortened or lengthened? Should the time periods be replaced with less specific requirements, such as "promptly" or "timely"? If so, please explain your reasoning.

Should the Commission require the notification required by proposed Rule 822(a)(4) to be sufficiently detailed to explain the new system development process, the new configuration of the system, its relationship to other systems, the timeframes or schedule for installation, any testing performed or planned, and an explanation on the impact of the change on the SB SEF's capacity estimates, contingency protocols and vulnerability estimates? [259]

Are there specific provisions in the proposed definitions that should be eliminated or refined? Are there some events which should be included in the

[257] This requirement would be similar to what is required of clearing agencies and proposed to be required of SDRs. *See* Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 20, 1980) and SDR Release, *supra* note 6.

[258] These requirements are similar to requirements related to disaster recovery plans of clearing agencies and proposed to be required of SDRs. *See id.* and SDR release, *supra* note 6. The requirement for geographical diversity is currently applicable to securities firms. *See* Exchange Act Release No. 47638 (April 7, 2003), 68 FR 17809 (April 11, 2003) (the "BCP Whitepaper").

[259] *See* ARP II Release, 56 FR 22490, *supra* note 245.

definitions of "material systems outage" and "material systems change" that are not, or events that should not be included in these definitions but are? If so, please explain your reasoning.

Are the definitions "objective review" and "competent, objective personnel" parallel to the requirements for SROs and other entities in the securities markets in the context of the current ARP program? Should the objective review required in proposed Rule 822(a)(2) be done on a regular, periodic basis, rather than on an annual basis?

The proposed requirement for an objective review focuses on a review of the SB SEF's automated systems that support or are integrally related to the performance of its activities. Is this an appropriate scope, or should other aspects of the SB SEF's operations be included? If so, which? In addition is this scope sufficiently understandable or should it be further defined?

Is the requirement in proposed Rule 822(a)(2) for an objective, external firm to assess the objectivity, competency, and work performance of an internal department that performed an objective review necessary or appropriate? If the objective review is done by an internal department, should the Commission require that the objective review be done by a department or persons other than those responsible for the development or operation of the systems being tested?

Do the proposed requirements for SB SEFs establish sufficient criteria against which an evaluation can be performed by a third party? If not, should the Commission impose a specific framework for the SB SEFs to use in establishing automated systems and related controls? If so, what would the critical components of the framework include? Are existing frameworks available that are suitable for this purpose and, if so, which ones would be considered appropriate?

Should the Commission require the use of a specific framework by outside or inside parties for evaluating whether SB SEFs have adequate capacity, resiliency, and security and that their automated systems are not subject to critical vulnerabilities? If so, what would the critical components of the framework include? Are existing frameworks available that are suitable for this purpose and, if so, which ones would be considered appropriate?

For reviews performed by internal audit departments, are the requirements for an external firm involvement appropriate? If not, what improvements could be made to promote appropriate reviews by external firms in these circumstances?

B. Electronic Filing

Proposed Rule 822(b) would require that every notification, review, or description and analysis required to be submitted to the Commission under proposed Rule 822 be submitted in an appropriate electronic format to the Office of Market Operations at the Division of Trading and Markets at the Commission's principal office in Washington, DC. This proposed requirement is intended to make proposed Rule 822 consistent with electronic-reporting standards set forth in other Commission rules under the Exchange Act, such as Rule 17a–-25 (Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers) [260] and Rule 19b–4 (Filings with respect to Proposed Rule Changes by Self-regulatory Organizations).[261]

The Commission preliminarily believes that the proposed provision would benefit SB SEFs by automating the process by which they submit notifications, reviews, and descriptions and analyses under proposed Rule 822 to the Commission. The Commission currently receives this type of information from SROs and other entities in the securities market in electronic format. Moreover, as noted above, this provision is intended to be consistent with other Commission rules.

Proposed Rule 822(b) would require submission of notifications, reviews, and descriptions and analyses in an "appropriate electronic format." The Commission anticipates that, if the provision is adopted, the staff would work with SB SEFs to determine appropriate electronic formats that could be used.

The Commission requests comment on all aspects of proposed Rule 822(b) as well as on the following specific issues. Are there specific provisions in proposed Rule 822(b) that should be eliminated or refined? If so, please explain your reasoning.

What is the likely impact of this requirement on the SB swap market, including the impact on the incentives and behaviors of SB SEFs, the willingness of persons to register as SB SEFs, and the technologies used for reporting information to the Commission?

C. Confidential Treatment

Proposed Rule 822(c) would provide that a person who submits a notification, review, or description and analysis pursuant to this Rule for which he or she seeks confidential treatment should clearly mark each page or segregable portion of each page with the words "Confidential Treatment Requested." Proposed Rule 822(c) would state that "[a] notification, review, or description and analysis submitted pursuant to this [Rule] will be accorded confidential treatment to the extent permitted by law."

The Commission would use the information collected under proposed Rule 822 to evaluate whether SB SEFs are reasonably equipped to handle market demand. For this reason, requiring SB SEFs to submit this information would be critical to the Commission's ability to effectively oversee SB SEFs.

Much of the information that the Commission expects to receive from SB SEFs under proposed Rule 822 is, by its nature, competitively sensitive. If the Commission were unable to afford confidential protection to the information that it expects to receive, then the SB SEFs may hesitate to submit the required information to the Commission. This result could potentially undermine the Commission's ability effectively to oversee SB SEFs, which, in turn, could undermine investor confidence in the SB swap market.

The Freedom of Information Act ("FOIA") provides at least two exemptions under which the Commission has authority to grant confidential treatment for the information submitted under proposed Rule 822. First, FOIA Exemption 4 provides an exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." [262] As specified in proposed Rule 822(c), "a notification, review, or description and analysis submitted pursuant to this [Rule] will be accorded confidential treatment to the extent permitted by law." The information required to be submitted to the Commission under proposed Rule 822 may contain proprietary information regarding automated systems that is privileged or confidential and thus subject to protection from disclosure under Exemption 4 of the FOIA.

Second, FOIA Exemption 8 provides an exemption for matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." [263] Similarly, Commission Rule 80(b)(8), Commission Records and Information,

[260] 17 CFR 240.17a–25.

[261] 17 CFR 240.19b–4.

[262] 5 U.S.C. 552(b)(4).

[263] 5 U.S.C. 552(b)(8).

implementing Exemption 8, states that the Commission generally will not publish or make available to any person matters that are "[c]ontained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, State, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions." [264]

The Commission requests comment on the following specific issues. Are there specific provisions in proposed Rule 822(c) that should be eliminated or refined? If so, please explain your reasoning. What is the likely impact of this requirement on the SB swaps market, including the impact on the incentives and behaviors of SB SEFs and the willingness of persons to register as SB SEFs?

XX. Core Principle 14—Chief Compliance Officer

Section 3D(d)(14) of the Exchange Act (Core Principle 14), requires registered SB SEFs to designate a CCO and requires the CCO to perform certain duties and to file compliance reports and financial reports annually.[265] Proposed Rule 823 would incorporate the requirements of Core Principle 14 and provide certain additional requirements for its implementation.

A. Appointment and Duties of CCO

Proposed Rule 823(a) would require a registered SB SEF to identify on its Form SB SEF a person who has been designated by the Board to serve as the CCO. The compensation and removal of the CCO would require the approval of a majority of the Board.[266] Proposed Rule 823(b) would incorporate the duties of the CCO contained in Core Principle 14.[267] Specifically, proposed Rule 823(b) would provide that each CCO shall: (1) Report directly to the Board or the senior officer of the SB SEF; (2) review the compliance of the SB SEF with respect to the Core Principles in Section 3D of the Exchange Act and the rules and regulations thereunder; (3) in consultation with the Board or the senior officer, resolve any conflicts of interest that may arise; (4) be responsible for establishing each policy and procedure that is required to be established under Section 3D of the Exchange Act and the rules and regulations thereunder; (5) monitor compliance with the Exchange Act and the rules and regulations thereunder relating to its business as a SB SEF, including each rule prescribed by the Commission under Section 3D of the Exchange Act; (6) establish procedures for the remediation of noncompliance issues identified by the CCO through any (i) compliance office review, (ii) look-back, (iii) internal or external audit finding, (iv) self-reported error, or (v) validated complaint; and (7) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

The CCO would be responsible for, among other things, keeping the SB SEF's Board or senior officer apprised of significant compliance issues and advising of needed changes in the SB SEF's policies and procedures. Given the critical role that a CCO is intended to play in ensuring a SB SEF's compliance with the Exchange Act and the rules and regulations thereunder, the Commission believes that a SB SEF's CCO should be competent and knowledgeable regarding the Federal securities laws and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures for the SB SEF.[268] To meet the statutory obligations, a CCO also should have a position of sufficient seniority and authority within the SB SEF to compel others to adhere to the SB SEF's policies and procedures. The Commission notes, however, that the SB SEF would not be required to hire an additional person to serve as its CCO. Instead, the SB SEF could designate an individual already employed by the SB SEF to serve as its CCO.

The Commission is concerned that a SB SEF's commercial interests might discourage its CCO from making forthright disclosure to the Board or the senior officer about any compliance failures. To mitigate this potential conflict of interest, the Commission believes that the CCO should be independent from the SB SEF's management so as not to be conflicted in reporting or addressing any compliance failures. To support this independence, the proposed rule would allow only a majority of the Board to approve the CCO's compensation and to remove the CCO from his or her responsibilities.

The Commission notes that proposed Regulation MC would require a SB SEF to establish a fully independent ROC, which would be the Board committee that would be responsible for monitoring a SB SEF's regulatory program for sufficiency, effectiveness, and independence.[269] The Board of a SB SEF should consider the appropriate reporting structure for the CCO, taking into account the potential conflicts of interest between the CCO and other senior officers of the SB SEF. Because the SB SEF would be required to have a ROC, the Board could elect to delegate to the ROC the duty of overseeing the CCO.

The Commission generally requests comments on all aspects of the proposed rules relating to the appointment and duties of the CCO. Should the Commission require a CCO to meet minimum competency standards? If so, what background, skills and other qualifications should a CCO be required to have? Does the proposed requirement that the CCO report directly to the Board or the senior officer balance the CCO's needs to work effectively with management and to have an adequate separation of business and regulatory influence? Are there situations when the CCO's ability to conduct his or her duties under the Exchange Act could be compromised if he or she were required to report to the senior officer? If so, are there steps that the SB SEF could take to resolve differences between the CCO and the senior officer? Should the Commission require a CCO to report to a specific senior officer? If so, to whom and why? Would it be preferable for the CCO to report to the Board? If so, would it be preferable for the Board to delegate the responsibility for oversight of the CCO to its ROC?

Is the Commission's proposed requirement regarding the Board's approval of a CCO's compensation and removal necessary or appropriate? Absent specific requirements imposed by Federal statute or rules, in general, the entity has the discretion to create the governance structure that it believes best promotes compliance with applicable laws and regulations, in accordance with the relevant laws of the entity's jurisdiction of incorporation or formation. As noted above, the Commission has identified potential conflict concerns between a SB SEF's commercial interests and its regulatory obligations. To mitigate such concerns

[264] 17 CFR 200.80(b)(8).

[265] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14) of the Exchange Act).

[266] *See* proposed Rule 823(a).

[267] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(B) of the Exchange Act).

[268] The Commission believes that the person that is designated by the Board to serve as the CCO should have the background and qualifications necessary to fulfill the responsibilities of the position.

[269] *See* Regulation MC Proposing Release, *supra* note 82, (proposing that the SB SEF establish a ROC composed solely of independent directors).

and support the independence of the CCO from management of the SB SEF, the Commission is proposing the requirement described above.[270] Do commenters believe that it would be appropriate to impose this requirement, or do commenters believe that SB SEFs would be able to comply with their regulatory obligations without this requirement? Would the removal of this requirement affect the ability of a CCO to comply with the extensive duties required of the CCO under the Dodd-Frank Act? If commenters do not agree that the proposed requirements are necessary or appropriate, why and what would be a better alternative, if any, to promote the independence and effectiveness of the CCO? For example, should the required percentage of Board approval be lower or higher? Or, should the Commission require that the CCO meet separately with the independent directors of the SB SEF, without anyone else present?[271] Would such a requirement promote the independence and effectiveness of the CCO by supporting his or her ability to speak freely with the independent directors about any sensitive compliance issues of concern to any of them? Do commenters believe that it would be appropriate to impose this type of requirement, or do commenters believe that SB SEFs would be able to comply with their regulatory obligations without a requirement such as this?

Should the Commission add a rule explicitly prohibiting any officers, directors, or employees of a SB SEF from, directly or indirectly, taking any action to coerce, manipulate, mislead, or fraudulently influence the CCO in the performance of his other responsibilities?

Are there any terms in proposed Rule 823(b) regarding the duties of the CCO that should be clarified or modified (*e.g.*, "look-back," "self-reported error," or "validated complaint")? If so, which terms and how should they be defined?

Are the duties of the CCO in proposed Rule 823(b) sufficiently clear? Should the Commission provide further guidance or rules on how the CCO should comply with these duties? If so, what kinds of guidance or rules would be appropriate to adopt in this context?

Should the Commission provide guidance in its proposed rules about the CCO's procedures for the remediation of noncompliance issues? Should the Commission provide guidance in its proposed rules on what would be considered "appropriate procedures" for the handling, management response, remediation, retesting, and closing of noncompliance issues? If so, what factors should the Commission take into consideration?

Would the CCO have difficulty discharging any of the obligations under proposed Rule 823? Would any of the CCO's obligations under proposed Rule 823 conflict with current obligations imposed on a CCO? If so, which ones and why? Should the Commission impose any additional duties on the CCO that are not already enumerated in Section 3D(d)(14) of the Exchange Act and incorporated in the proposed rule?

What is the likely impact of the Commission's proposed rule on the SB swap market? Would the proposed rule potentially promote or impede the establishment of SB SEFs? With respect to entities that currently provide a marketplace for trading SB swaps and that may be required to register under the Dodd-Frank Act, how do current practices compare to the practices that the Commission proposes to require in this rule? What are the incremental costs to potential SB SEFs in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

How might the evolution of the SB swaps market over time affect SB SEFs and impact the Commission's proposed rule?

B. Annual Reports

Section 3D(d)(14)(C) of the Exchange Act requires the CCO to prepare and sign an annual report, in accordance with rules prescribed by the Commission.[272] Proposed Rule 823(c) would prescribe the rules to implement this statutory provision.[273] Proposed Rule 823(c)(1) would implement the requirements in Section 3D(d)(14)(C)(i) under Exchange Act for the CCO to annually prepare and sign a report that contains a description of: (i) The compliance of the SB SEF with respect to the Exchange Act and the rules and regulations thereunder; and (ii) the policies and procedures of the SB SEF (including the code of ethics and conflicts of interest policies of the SB SEF).[274]

The Commission also is proposing certain minimum requirements in proposed Rule 823(c)(1) for the information that should be provided in the CCO's annual report.[275] The proposed minimum requirements would provide guidance for including in the report certain key disclosures about the SB SEF's compliance with the Core Principles. However, this proposed provision is not intended to be an exhaustive list; any other relevant descriptions of the SB SEF's compliance with the Exchange Act and the policies and procedures of the SB SEF related thereto, consistent with the broader statutory requirement in Section 3D(d)(14)(C) of the Exchange Act, also should be included in the CCO's annual report.[276]

Proposed Rule 823(c)(1)(i) through (ii) would require the annual report to include a description of the SB SEF's enforcement of its policies and procedures and information on all investigations, inspections, examinations, and disciplinary cases opened, closed, and pending during the reporting period. Proposed Rule 823(c)(1)(iii) would require the annual report to include a description of all grants of access (including, for all participants, the reasons for granting such access) and all denials or limitations of access (including, for each applicant, the reasons for denying or limiting access), consistent with Rule 811(b)(3). The disclosures in proposed Rule 823(c)(i) through (iii) would provide a basis for evaluating the effectiveness of the SB SEF's compliance program under the standards in Core Principle 2, which generally requires the SB SEF to establish and enforce compliance with its rules.

Proposed Rule 823(c)(1)(iv) through (v) would require the annual report to include any material changes to the SB SEF's policies and procedures since the date of the preceding compliance report and any recommendation for material changes to the policies and procedures as a result of the annual review (including the rationale for such recommendation, and whether such policies and procedures were or will be modified by the SB SEF to incorporate such recommendation).[277] The

[270] The Commission proposed this same requirement in its proposal relating to the registration and regulation of security-based swap data repositories. *See* SDR Release, *supra* note 6.

[271] The concept of an individual with regulatory oversight responsibilities having mandated access to the independent directors without the presence of non-independent directors on the entity's board is not novel, although it has not to date been specifically mandated by the Exchange Act or rules thereunder. *See, e.g.*, Article IV, Sec. 7 of the Nasdaq Bylaws (requiring the Chief Regulatory Officer of Nasdaq to meet in executive session with the Regulatory Oversight Committee of Nasdaq, which is a fully independent committee of the Nasdaq board).

[272] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(C) of the Exchange Act).

[273] *See* proposed Rule 823(c).

[274] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(C)(i) of the Exchange Act) and proposed Rule 823(c)(1).

[275] *See* proposed Rule 823(c)(1).

[276] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(C) of the Exchange Act).

[277] The term "material change" would be defined as a change that a CCO would reasonably need to

proposed requirements should demonstrate the kinds of compliance issues the SB SEF is facing and how the CCO is addressing those issues.

Proposed Rule 823(c)(1)(vi) through (vii) would require the annual report to include the results of the SB SEF's surveillance program (including information on the number of reports and alerts generated, and the reports and alerts that were referred for further investigation or for an enforcement proceeding) and any complaints received on the SB SEF's surveillance program. The proposed requirements should provide a demonstration of the effectiveness of the SB SEF's compliance program in detecting violations and the appropriateness of the SB SEF's response in addressing such detected violations.

Finally, proposed Rule 823(c)(1)(viii) would require the CCO's annual report to include any material compliance matters identified since the date of the preceding compliance report.[278] This proposed requirement would indicate the most significant compliance matters that the SB SEF is dealing with on its market. The Commission notes that individual compliance matters may not be material when viewed in isolation, but may collectively suggest a material compliance matter.

Although the proposed rule would require only annual reviews, the CCO should consider the need for interim reviews in response to significant compliance events, changes in business arrangements, and regulatory developments. For example, if there is an organizational restructuring of a SB SEF, its CCO should evaluate whether the SB SEF's policies and procedures are adequate to guard against potential conflicts of interest. Additionally, if a new rule regarding SB SEFs is adopted by the Commission, then the CCO should review its policies and procedures to ensure compliance with the rule.

Proposed Rule 823(c)(2) would implement the requirement in Section 3D(d)(14)(C)(ii)(I) of the Exchange Act for the CCO to submit the annual report with the appropriate financial reports of the SB SEF at the time of filing.[279] The proposed rule also would implement the requirement in Section 3D(d)(14)(C)(ii)(II) of the Exchange Act that the CCO include a certification in its report, under penalty of law, that the report is accurate and complete.[280]

Under proposed Rule 823(d), the CCO would be required to submit the annual compliance report to the Board for its review prior to the submission of the report to the Commission.[281] The Commission notes, however, that the CCO should promptly bring serious compliance issues to the attention of the full Board or the Board's independent directors rather than wait until an annual report is prepared.

The Commission generally requests comments on all aspects of the proposed rules regarding annual compliance reports. Are the Commission's proposed rules regarding annual compliance reports appropriate and sufficiently clear? If not, why not and what would be a better approach?

Are the proposed definitions of "material change" and "material compliance matter" appropriate? If not, are they over-inclusive or under-inclusive, and how else should these terms be defined?

Proposed Rule 823(c)(1) lists specific disclosures that would need to be included in each annual compliance report. Are there other specific items that should be required? For example, should disclosures about instances when the SB SEF or the Board has not accepted the recommendations of the swap review committee be required to be included in the annual compliance report? Would such information be helpful to the Commission in evaluating whether conflicts of interest are impacting decisions about whether to trade, or how to trade, a particular SB swap?

Should the Commission propose a timeframe for the CCO to submit his or her annual compliance report for the review by the Board? If so, what would be an appropriate timeframe? Should the Commission permit the SB SEF to request an extension to file an annual compliance report (*e.g.,* due to substantial, undue hardship)?

If a CCO reports to the senior officer of the SB SEF rather than to the Board, should the Commission permit the CCO to submit his or her annual compliance report for prior review to the senior officer rather than to the Board, in addition to the Board, or only when the SB SEF does not have a Board? Would any of these alternatives lessen the independence of the CCO in any way?

Should the Commission prohibit a SB SEF's Board from requiring its CCO to make any changes to the annual compliance report? If the Commission permits the CCO to submit his or her annual compliance report to the senior officer for prior review, instead of to the Board or in addition to the Board, should a similar prohibition be applied to the senior officer? Would such a prohibition be necessary, in either case, in light of the CCO's statutory requirement to certify that the compliance report is accurate and complete?

Is the Commission's proposed requirement that the CCO meet separately with the independent directors of a SB SEF appropriate? If not, why not and what would be a better alternative?

Are the Commission's proposed minimum disclosure requirements in the CCO's annual compliance report appropriate? If not, why not and what would be a better alternative? Should the Commission require any other disclosures in the CCO's annual compliance report?

Would keeping the compliance reports confidential encourage the CCO to be more forthcoming about sensitive compliance issues or would it likely not have any impact on the disclosure of such issues? Are there any disadvantages to keeping the CCO's compliance report confidential? How could the Commission address any such disadvantage? Would making the CCO's compliance report public be useful to the public or other regulators?

What is the likely impact of the Commission's proposed rule on the SB swap market? Would the proposed rule potentially promote or impede the establishment of SB SEFs? With respect to entities that currently provide a marketplace for trading SB swaps and that may be required to register under the Exchange Act, as amended by the Dodd-Frank Act, how do current practices compare to the practices that the Commission proposes to require in this rule? What would be the incremental costs to potential SB SEFs in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

How might the evolution of the SB swaps market over time affect SB SEFs and impact the Commission's proposed rule?

know in order to oversee compliance of the SB SEF. *See* proposed Rule 800.

[278] The term "material compliance matter" would be defined as any compliance matter that the Board would reasonably need to know to oversee the compliance of the SB SEF and includes, without limitation: (1) A violation of the Federal securities laws by the SB SEF, its officers, directors, employees, or agents; (2) a violation of the policies and procedures of the SB SEF, by the SB SEF, its officers, directors, employees, or agents; or (3) a weakness in the design or implementation of the SB SEF's policies and procedures. *See* proposed Rule 800.

[279] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(C)(ii)(I) of the Exchange Act) and proposed Rule 823(c)(2).

[280] *See* Public Law 111–203, § 763(c) (adding Section 3D(d)(14)(C)(ii)(II) of the Exchange Act) and proposed Rule 823(c)(2).

[281] *See* proposed Rule 823(d).

C. Financial Reports

Section 3D(d)(14)(C)(ii)(I) of the Exchange Act requires a compliance report filed by the CCO to be accompanied by each appropriate financial report of the SB SEF that is required to be furnished to the Commission pursuant to Section 3D of the Exchange Act. The Commission is proposing Rule 823(e), which would set forth the appropriate financial reports that a SB SEF would be required to include with its annual compliance reports.[282] Proposed Rule 823(e)(1) would require the financial reports of the SB SEF to: (1) Be a complete set of financial statements of the SB SEF that are prepared in accordance with U.S. generally accepted accounting principles for the most recent two fiscal years of the SB SEF; (2) be audited in accordance with standards of the Public Company Accounting Oversight Board ("PCAOB") by a public accounting firm that is registered with the PCAOB and is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); (3) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02); and (iv) include the SB SEF's accounting policies and practices.[283]

Under Proposed Rule 823(e)(1)(v), if the SB SEF's financial statements contain consolidated information of the SB SEF's subsidiaries, then the SB SEF's financial statements also would need to provide condensed financial information, in a financial statement footnote, as to the financial position, changes in financial position and results of operations of the SB SEF, as of the same dates and for the same periods for which audited consolidated financial statements are required.[284] Such financial information would need not be presented in greater detail than is required for condensed statements by Rules 10–01(a)(2), (3), and (4) of Regulation S–X. Detailed footnote disclosure that would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations, and guarantees. Descriptions of significant provisions of the SB SEF's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the SB SEF would also be required to be provided along with a five-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements and guarantees of the SB SEF have been separately disclosed in the consolidated statements, then they would not need to be repeated in this schedule.[285] This proposed requirement is substantially similar to Rule 12–04 of Regulation S–X, which pertains to condensed financial information of registrants.[286]

Under proposed Rule 823(e)(2), for SB SEFs with affiliated entities (any subsidiary in which the applicant has, directly or indirectly, a 25% interest and for every entity that has, directly or indirectly, a 25% interest in the applicant), for each affiliated entity, the financial report would also be required to include a complete set of unconsolidated financial statements (in English) for the latest two fiscal years and such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading.[287] The Commission notes that information on affiliated entities is currently requested for national securities exchanges [288] and is important information for the Commission to obtain because the financial health of affiliated entities could potentially have an impact on the financial condition of the SB SEF.

Proposed Rule 823(e)(4) also would require the financial statements to be provided in XBRL, consistent with Rules 405(a)(1), (a)(3), (b), (c), (d), and (e) of Regulation S–T.[289] Specifically, information in the financial statements would be required to be tagged [290] using XBRL to allow the Commission to assess and analyze effectively the SB SEF's financial and operational condition.

Finally, annual compliance reports and financial reports filed pursuant to proposed Rule 823 would be required to be filed within 60 days after the end of the fiscal year covered by such reports.[291]

The Commission notes that with respect to its other registrants, the Commission has required, at a minimum, the proposed financial information and in some instances, significantly more information.[292] The Commission believes that it would be important to obtain an audited annual financial report covering two years from each registered SB SEF to understand the SB SEF's financial and operational condition, particularly because SB SEFs are intended to play a pivotal role in improving the transparency of the OTC derivatives markets.[293] Among other things, the financial statements could help the Commission evaluate whether a SB SEF has adequate financial resources to comply with its statutory obligations or is having financial difficulties. If a SB SEF ultimately ceases doing business, it could create a significant disruption in the OTC derivatives market. The Commission believes that the financial information that it is seeking pertaining to the affiliates of the SB SEF is relevant and necessary as the financial condition of the affiliates could have an immediate or future impact on the condition of the SB SEF.

The Commission requests comments on all aspects of the proposed rules relating to financial statements. Is the Commission's proposed rule regarding a SB SEF's financial report appropriate and sufficiently clear? If not, why not and what would be a better alternative? Should the Commission permit a financial report by a SB SEF that is a foreign private issuer to be in compliance with International Financial Reporting Standards as an alternative to GAAP? If so, why and what are the costs and benefits to permitting this?

Is the Commission's proposed rule requiring financial reports to cover the most recent two fiscal years of a SB SEF appropriate? If not, should the lookback timeframe be greater (*e.g.,* the most recent three fiscal years) or shorter (*e.g.,* the most recent fiscal year)?

Is the Commission's proposed requirement regarding a SB SEF's condensed financial information appropriate and sufficiently clear? If not, why not and what would be a better alternative?

Is the Commission's proposed 60-day timeframe for a SB SEF to file the annual and financial report appropriate?

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[282] The financial statements required by these proposed rules are the same as the requirements for the annual financial statements that would be required to be submitted pursuant to Exhibits F and H of proposed Form SB SEF. *See infra* Section XXII. To avoid submitting duplicative financial statements, the CCO may represent in the annual compliance report that the financial statements required by proposed Rule 823(e) have been submitted to the Commission as part of the annual update of Form SB SEF required by proposed Rule 802(f).

[283] *See* proposed Rule 823(e)(1).

[284] *See* proposed Rule 823(e)(1)(v).

[285] *Id.*

[286] *See* 17 CFR 210.9–06.

[287] *See* proposed Rule 823(e)(2).

[288] *See* Form 1 and instructions thereunder.

[289] *See* 17 CFR 232.405 (imposing content, format, submission and Web site posting requirements for an interactive data file, as defined in Rule 11 of Regulation S–T).

[290] Tagging refers to labeling fields of data electronically so that it can be searched electronically by categories. *See* proposed Rule 800.

[291] *See* proposed Rule 823(f).

[292] *See, e.g.,* Rule 17a–5(d) under the Exchange Act, 17 CFR 240.17a–5(d).

[293] *See* Public Law 111–203, § 763(c) (adding Section 3D of the Exchange Act).

If not, should the timeframe be shorter or longer (*e.g.,* 30 days or 90 days)? Would a SB SEF's financial report be useful to the public or other regulators? If so, explain.

Are the financial report requirements relating to certain affiliates of SB SEFs too broad or overly burdensome? Are there any terms in the Commission's proposed rule regarding a SB SEF's financial report that need to be defined or clarified? If so, which terms?

What is the likely impact of the Commission's proposed rule on the SB swap market? Would the proposed rule potentially promote or impede the establishment of SB SEFs? With respect to entities that currently provide a marketplace for trading SB swaps and that may be required to register under the Dodd-Frank Act, how do current practices compare to the practices that the Commission proposes to require in this rule? What would be the incremental costs to potential SB SEFs in connection with adding to or revising their current practices in order to implement the Commission's proposed rule?

How might the evolution of the SB swaps market over time affect SB SEFs and impact the Commission's proposed rule relating to the CCO?

XXI. Registration of Security-Based Swap Execution Facilities

As stated above, a primary goal of the Dodd-Frank Act is to improve the transparency and oversight of the OTC derivatives market and to guard against systemic risk in the trading of these instruments. A key aim of the legislation is to bring the trading of mandatorily cleared OTC derivatives onto regulated markets. In this regard, the Dodd-Frank Act amends the Exchange Act to add new Section 3D of the Exchange Act.[294] Section 3D(a)(1) of the Exchange Act provides that no person may operate a facility for the trading or processing of SB swaps, unless the facility is registered as a SB SEF or as a national securities exchange.[295] Core Principle 1 for SB SEFs, as set forth in Section 3D(d)(1)(A) of the Exchange Act,[296] provides that, to be registered and maintain its registration as a SB SEF, a SB SEF must comply with the 14 Core Principles governing SB SEFs and any requirement that the Commission may impose by rule or regulation.[297]

The Commission's rules currently provide for registration frameworks for two types of trading venues for securities, namely national securities exchange registration and broker-dealer registration for ATSs. SB SEFs represent an additional category of registered entities under the Exchange Act and the Commission preliminarily believes that it would be appropriate to adopt a registration process for SB SEFs that is similar to the Commission's existing registration framework for national securities exchanges. SB SEFs, like national securities exchanges, have regulatory obligations pursuant to the Exchange Act.[298] Also, pursuant to the Dodd-Frank Act, both national securities exchanges and SB SEFs would be permitted to trade SB swaps, although exchange trading of SB swaps is governed by Section 6 of the Exchange Act [299] and other provisions of the Exchange Act relevant to SROs.[300] The registration process for national securities exchanges is already established, but no process exists for SB SEFs. Thus, the Commission is proposing rules that would require an application registration process for SB SEFs and a form for such application, which would be subject to approval by the Commission.

A. Initial SB SEF Registration

1. Procedures for Registration

Proposed Rule 801(a) provides that an application for the registration of a SB SEF would need to be filed electronically in a tagged data format [301] with the Commission on the new proposed Form SB SEF, in accordance with the instructions contained in the Form SB SEF.[302] Proposed Form SB SEF also would be used by a SB SEF for submitting all amendments to the Form SB SEF.[303] The Commission's proposal contemplates the use of an online filing system through which a SB SEF would be able to file a completed Form SB SEF, which would be available on the Commission's Web site and accessible from any computer with Internet access.[304] Based on the widespread use and availability of the Internet, the Commission believes that filing Form SB SEF in an electronic format would be less burdensome and a more efficient filing process for SB SEFs, the Commission, and the public.

The Commission's proposal requires a Form SB SEF to be filed with the Commission in a tagged data format. As part of the Commission's longstanding efforts to increase transparency and the usefulness of information, the Commission has been implementing data-tagging of information contained in electronic filings to improve the accuracy of financial information and facilitate its analysis.[305] Data becomes

[294] *See* Public Law 111–203, § 763(c) (adding Section 3D of the Exchange Act).

[295] *Id.*

[296] *Id.*

[297] *Id.*

[298] For example, pursuant to Section 3D(d)(2) of the Exchange Act, Public Law 111–203, § 763(c), a SB SEF is required to: (1) Establish and enforce compliance with any rule established by it, including (i) the terms and conditions of the SB swaps traded or processed on or through the facility and (ii) any limitation on access to the facility; (2) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means (i) to provide market participants with impartial access to the market; and (ii) to capture information that may be used in establishing whether rule violations have occurred; and (3) establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

[299] 15 U.S.C. 78f.

[300] *See, e.g.,* Section 19 of the Exchange Act, 15 U.S.C. 78s.

[301] Proposed Rule 800 would define the term "tag" or "tagged" to mean an identifier that highlights specific information submitted to the Commission and that is in the format required by the EDGAR Filer Manual, as described in Rule 301 of Regulation S–T, 17 CRF 232.301.

[302] *See* proposed Rule 801(a).

[303] *See* Section XXI.B *infra* for a discussion of the amendments to Form SB SEF required in proposed Rule 802. An application for registration or any amendment thereto filed pursuant to Regulation SB SEF would be considered a "report" filed with the Commission for purposes of Sections 18(a) and 32(a) of the Exchange Act and the rules and regulations thereunder. *See* proposed Rule 801(f). Exchange Act Sections 18(a) and 32(a) set forth the potential liability for a person who makes, or causes to be made, any false or misleading statement in any "report" filed with the Commission (*e.g.,* Form SDR). Specifically, Exchange Act Section 18(a) provides, in part, that "[a]ny person who shall make or cause to be made any statement in any * * * report * * * which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading." 15 U.S.C. 78r(a). Exchange Act Section 32(a) provides, in part, that "[a]ny person who willfully and knowingly makes, or causes to be made, any statement in any * * * report * * * which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed." 15 U.S.C. 78ff(a).

[304] If the Commission adopts the rule as proposed, it is possible that SB SEFs may be required to file Form SB SEF in paper until such time as an electronic filing system is operational and capable of receiving the form. In such a case, SB SEFs would be notified as soon as the electronic system is operational to accept filings on Form SB SEF.

[305] *See* Regulation S–T, 17 CFR 232. *See also* Securities Act Release No. 8891 (Feb. 6, 2008), 73 FR 10592 (Feb. 27, 2008); Securities Act Release No. 9002 (Jan. 30, 2009), 74 FR 6776 (Feb. 10, 2009); Securities Act Release No. 9006 (Feb. 11, 2009), 74 FR 7748 (Feb. 19, 2009); Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009);

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machine-readable when it is labeled, or tagged, using a computer markup language that can be processed by software programs for analysis. Such computer markup languages use standard sets of definitions, or "taxonomies," that translate text-based information in Commission filings into structured data that can be retrieved, searched, and analyzed through automated means. Requiring the information to be tagged in a machine-readable format using a data standard that is freely available, consistent, and compatible with the tagged data formats already in use for Commission filings would enable the Commission to review and analyze effectively Form SB SEF submissions.

Proposed Rule 801(a) provides that a registration application on Form SB SEF must include information sufficient to demonstrate compliance with the Exchange Act and rules and regulations thereunder. The proposed rule provides that if a registration application is not complete, the Commission will notify the applicant that the application will not be deemed to have been submitted for purposes of the Commission's review.[306] Pursuant to the proposed rule, an application on Form SB SEF would not be considered to be complete unless an applicant has submitted, at a minimum, the Execution Page and Exhibits as required in proposed Form SB SEF, and any other material that the Commission may require, upon request, in order to be able to determine whether the applicant is able to comply with the Exchange Act and rules and regulations thereunder. Such other material may include, but is not limited to, information regarding the applicant's system test procedures, contingency or disaster recovery plans, and the manner in which the applicant would conduct market and financial surveillance.

Proposed Rule 801(b) sets forth the SB SEF registration application processes for (i) applications received during the initial implementation phase of Regulation SB SEF, from the date of Regulation SB SEF's effectiveness up to and including July 31, 2014 ("initial implementation period"), and (ii) applications received after the initial implementation period (*i.e.,* after July 31, 2014).

Proposed Rule 801(b)(1) would provide that for applications for registration as a SB SEF filed on Form SB SEF with the Commission on or before July 31, 2014, within 360 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission would be required to either grant the registration or institute proceedings to determine whether registration should be denied. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing and would be required to be concluded within 450 days after the date on which the application for registration is furnished to the Commission. At the conclusion of such proceedings, the Commission, by order, would be required to grant or deny such registration. The Commission would be able to extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

Proposed Rule 801(b)(2) would provide that for applications for registration as a SB SEF filed on Form SB SEF with the Commission after July 31, 2014, within 180 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission would be required to either grant the registration or institute proceedings to determine whether registration should be denied. Such proceedings would include notice of the grounds for denial under consideration and opportunity for hearing and would be required to be concluded within 270 days after the date on which the application for registration is furnished to the Commission. At the conclusion of such proceedings, the Commission, by order, would be required to grant or deny such registration. The Commission would be able to extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The proposed rule further provides that the Commission would grant the registration of an applicant if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to the applicant are satisfied, and would deny such registration if it does not make such finding.[307]

The proposed process for SB SEF's to apply for initial registration would provide a mechanism for an applicant to demonstrate that it has the operational and financial capability to operate as a SB SEF and can comply with the Federal securities laws and the rules and regulations thereunder, including the Core Principles, and would allow the Commission to consider the materials provided by the SB SEF and to make an informed determination as to whether the SB SEF complies with the Exchange Act and the rules and regulations thereunder. In addition, the application process would allow the Commission staff to ask questions and, as needed, to require amendments or changes to the application or additional information to address legal and regulatory concerns before approving an application for registration. Further, providing a process and timeframes for the application process would provide certainty to applicants as to the procedural aspects of registering as a SB SEF.

As no SB SEF is currently registered with the Commission and a number of entities have informed the Commission that they may seek to register as a SB SEF, the Commission contemplates receiving a large volume of applications for registration as a SB SEF within the first 3 years following any adoption of rules applicable to SB SEFs. The proposed timeframes for the Commission to review applications for registration as a SB SEF set forth in proposed Rule 801(b) recognize that, as the Commission has limited resources, the Commission may require an extended period of time to review these applications. For applications filed after the initial implementation period, the proposed timeframes for the Commission to review applications for registration as a SB SEF would be decreased to mirror those set forth in Section 19(a)(1) of the Exchange Act applicable to the review of SRO registration applications. The Commission believes that the timeframes for Commission review during and after the initial implementation period are appropriate in light of the anticipated volume of registration applications during the initial implementation period. The Commission also believes that the temporary registration provisions of proposed Rule 801(c), discussed below, should work in combination with the proposed review and approval process to allow both the Commission and entities seeking to register as SB SEFs to comply with the provisions of the Exchange Act, as amended by the Dodd-Frank Act, in a timely manner. In addition, the Commission notes that the process for the Commission to review registration applications for SB SEFs would be similar to the process for reviewing applications of other registrants by the Commission (*e.g.,* national securities exchanges, national

Investment Company Release No. 29132 (Feb. 23, 2010), 75 FR 10060 (Mar. 4, 2010).

[306] *See* Proposed Rule 801(a).

[307] *See* proposed Rule 801(b)(3).

securities associations, and clearing agencies).[308]

The Commission requests comments on all aspects of the proposed rules relating to the registration process for SB SEFs. Is the Commission's proposed registration process appropriate and sufficiently clear? If not, why not and what would be a better alternative? Are the timeframes in the proposed registration process appropriate? If not, why not and what would be more appropriate timeframes? Should timeframes be omitted from the process? Should different time periods apply to the Commission's review of applications during the initial implementation period? If not, why not? Should the Commission have greater flexibility to extend the timeframes?

Are the proposed factors in determining whether the Commission should grant or deny an application for registration appropriate and sufficiently clear? If not, why not? Should the Commission take into consideration any other factors in determining whether to grant or deny an application for registration?

In order to form a more complete and informed basis on which to determine whether to grant, deny, or revoke a SB SEF's registration, the Commission is considering whether to adopt a requirement that a SB SEF file with the Commission, as a condition of registration or continued registration, a review relating to the SB SEF's operational capacity and ability to meet its regulatory obligations. The Commission could require such a review to be in the form of a report conducted by the SB SEF, an independent third party, or both. This review could be required as an exhibit to Form SB SEF at the time of registration or as an amendment to Form SB SEF at a later date (*e.g.,* one year after the registration becomes effective) to allow the review to evaluate the SB SEF's capabilities after some operational experience following registration.

Should the Commission require a SB SEF to conduct or obtain a review relating to the SB SEF's operational capacity and ability to meet its regulatory obligations? If not, why not? If so, how should the Commission define the nature and scope of this review? Should the Commission identify a specific framework for SB SEFs or independent third parties to follow when conducting a review? If so, what would the critical components of the framework include? Are existing frameworks available that are suitable for this purpose and, if so, which ones would be considered appropriate? Should the review resemble a report, audit, or something else?

Should the Commission require the SB SEF, an independent third party, or some other entity to conduct the review? What are examples of such a review? Should the Commission require a review on a case-by-case basis or for all SB SEFs? Should the Commission require that the review be filed with the Commission? If not, why not? If so, should it be required to be filed with the Commission as a condition of registration pursuant to proposed Rule 801? If not, why not? When should the Commission require the filing of any review? Would conducting or obtaining a review, or filing such review with the Commission, impose impracticable burdens and costs on SB SEFs? Please explain the burdens and quantify the costs of such a review.

If the Commission were to adopt a rule requiring a review by an independent third party, should the rule specify some minimum standard of review or the types of review that should be performed? If so, what should the standards be? Should there be minimum qualification standards for the independent third party? Are there any particular types of third party service providers that should not be permitted to conduct a review of a SB SEF? Should the Commission also require that a SB SEF certify the accuracy of the review and provide disclosure regarding the nature of the review, findings, and conclusions? To what extent should a SB SEF be permitted to rely on a third party that it hired to perform the review? Should the Commission condition the ability of a SB SEF to rely on a third party's review? Would a review by an independent third party be necessary in light of the CCO's annual compliance report or proposed Rule 822?

2. Temporary Registration

Proposed Rule 801(c) under Regulation SB SEF would provide a method for the Commission to grant temporary registration to SB SEFs.[309] Specifically, for any application for registration as a SB SEF filed with the Commission in accordance with the provisions of proposed Rule 801(a) on or before July 31, 2014 for which the SB SEF indicates on the Execution Page that it would like to be considered for temporary registration, the Commission could grant such temporary registration to the SB SEF, which temporary registration would expire on the earlier of: (1) The date that the Commission grants or denies registration of the SB SEF; or (2) the date that the Commission rescinds the temporary registration of the SB SEF. In considering whether to grant a request for temporary registration, the Commission would review and consider the information and materials provided by the SB SEF in its registration application on Form SB SEF that the Commission believes to be relevant, including, but not limited to: Whether the applicant's trading system satisfies the definition of a "security-based swap execution facility" in Section 3(a)(77) of the Exchange Act and any Commission rules, interpretations or guidelines regarding such definition; [310] any access requirements or limitations imposed by the SB SEF; [311] the ownership and voting structure of the SB SEF; [312] and any certifications made by the SB SEF, including with respect to its capacity to function as a SB SEF and its compliance with the Exchange Act and the rules and regulations thereunder.[313] In addition, the Commission would expect that SB SEFs registered on a temporary registration basis demonstrate that they have the capacity and resources to comply with their regulatory obligations on an ongoing basis as their business evolves. After granting a temporary registration to a SB SEF, the Commission could rescind such temporary registration if, upon further review, the Commission found that the applicant did not meet the requirements for granting the registration of a SB SEF set forth in proposed Rule 801(b)(3),[314] or if the conditions for revoking or canceling the registration of a SB SEF in proposed Rules 804(d) and (e) under Regulation SB SEF were met.[315]

The Dodd-Frank Act provides that, unless otherwise provided, the provisions of Title VII shall be effective on the later of 360 days after the date

[308] *See* Section 19(a)(1) of the Exchange Act, 15 U.S.C. 78s(a)(1). In addition, the Commission notes that the SEC Rules of Practice would be applicable to the Commission's review of registration applications for SB SEFs. *See* 17 CFR 201.100, *et seq.*

[309] *See* proposed Rule 801(c).

[310] *See* Exhibit I, Item 1 of proposed Form SB SEF.

[311] *See* Exhibit I, Item 2 and Exhibit L of proposed Form SB SEF.

[312] *See* Exhibit E of proposed Form SB SEF.

[313] *See* Execution Page of proposed Form SB SEF.

[314] *See* proposed Rule 801(b)(3).

[315] *See* proposed Rule 804(c) and discussion *infra* Section XXI.C. Proposed Rule 804(c) provides that the Commission may, by order, cancel or revoke a SB SEF's registration if the Commission finds that the SB SEF obtained its registration by making a false or misleading statements with respect to any material fact, is no longer in existence, has ceased to do business in the capacity specified in its application for registration, or has violated or failed to comply with any provision of the Federal securities laws and the rules and regulations thereunder.

of the enactment of Title VII or not less than 60 days after the publication of final rules or regulations implementing such provisions.[316] The Commission preliminarily believes that the proposed temporary registration process for SB SEFs could serve as a useful tool during the initial implementation period to allow the Commission to temporarily register an applicant as a SB SEF following an initial review of a SB SEF's application for registration where it believes such temporary registration is appropriate. The Commission preliminarily believes that this would be beneficial in order to allow SB SEFs to comply with the timeframe set forth in the Dodd-Frank Act while still giving the Commission sufficient time to review an application more thoroughly before granting a registration that is not limited in duration. A SB SEF that is temporarily registered with the Commission would still need to comply with all provisions of the Exchange Act and the rules and regulations thereunder, including Section 3D of the Exchange Act and proposed Regulation SB SEF.

The Commission requests comments on all aspects of the proposed rules with respect to temporary registration. Is the Commission's proposed rule regarding temporary registration appropriate? If not, why not? Is the Commission's proposed rule for temporary registration sufficiently clear? If not, how can it be clarified? What is the best method for a SB SEF to request temporary registration from the Commission? Is it appropriate to include a check box on Form SB SEF as proposed? Would a different method be more appropriate? Are there more appropriate methods other than temporary registration that would allow SB SEFs to meet the timelines for compliance set forth in the Dodd-Frank Act? If so, what are those methods?

As discussed above, the Commission anticipates receiving a large volume of applications for registration as a SB SEF within the first 3 years following the adoption of the proposed rules, and the ability to grant temporary registration during such initial implementation period could be an important tool for the Commission to allow SB SEFs to comply with the provisions of the Exchange Act, as amended by the Dodd-Frank Act, while providing the Commission with additional time to conduct a thorough review of the SB SEF prior to granting permanent registration. Should temporary registration be limited to those registration applications filed during the initial implementation period as proposed? If not, why not? Should the Commission be able to grant temporary registration to any registration application, regardless of when filed? If temporary registration should be limited to a specific time period, would a time period other than the initial implementation period be appropriate? If so, what time period would be appropriate?

Should temporary registration be granted only after the filing of a completed registration application? Should there be a separate application for temporary registration other than proposed Form SB SEF? Should the proposed rule specify the items the Commission must review prior to granting temporary registration? Should temporary registration be granted by the Commission only when certain conditions are met? If so, what should those conditions be? Should the proposed rule specify the findings the Commission must make in order to grant a temporary registration? In what instances should a temporary registration be denied? For example, should a temporary registration be denied if a Form SB SEF is not sufficiently complete? Are there any reasons not specified in this release upon which a temporary registration should be rescinded?

Should the Commission be required to grant temporary registration within a specified time frame? If so, what time period would be appropriate? Is it appropriate to stay the time period for Commission action on a registration application if the Commission grants a SB SEF temporary registration? If so, should such stay be limited in duration? What would be the appropriate time period for such stay?

Would it be feasible for a SB SEF to comply with Section 3D of the Exchange Act and the rules and regulations thereunder within 60 days after publication of the final rules applicable to SB SEFs? If not, which requirement(s) would be difficult for a SB SEF to comply with upon the effective date? Should any requirement(s) be imposed on an incremental basis or with a phased-in approach? If so, what would be an appropriate timeframe for such requirement(s) to be met?[317]

Is it essential that a SB SEF that is temporarily registered be required to comply with all provisions of the Exchange Act and the rules and regulations thereunder? If not, are there specific requirements that the Commission should consider not requiring a SB SEF to comply with during a temporary registration period? If so, what are such requirements and for what reasons should the Commission consider not requiring them?

3. Non-Resident Persons and Control Persons

Proposed Rule 801(d) would require each SB SEF applying for registration with the Commission to designate and authorize on Form SB SEF an agent in the United States, other than a Commission member, official, or employee, to accept notice or service of process, pleadings, or other documents in any action or proceedings brought against the SB SEF to enforce the Federal securities laws and the rules and regulations thereunder.[318]

The Commission preliminarily believes that before granting registration to a SB SEF, it is appropriate to obtain assurance that such person has an agent for service of process in the United States in order to facilitate proper notification to the SB SEF of any actions or proceedings the Commission may wish to bring against such SB SEF.

Proposed Rule 801(e) would require any person applying for registration on Form SB SEF that is controlled by another person[319] to certify on Form SB SEF and provide an opinion of counsel that any person that controls such applicant will consent to and can, as a matter of law, (1) provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF; and (2) submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF.[320] In addition, proposed Rule 802(c) would require any SB SEF controlled by any other person to file an amendment to Exhibit P on Form SB SEF within 5 business days after any changes in the legal or regulatory framework of any person that controls

[316] *See* Public Law 111–203, § 774.

[317] *See infra* Section XXV for a discussion regarding a potential phased-in approach.

[318] *See* proposed Rule 801(d).

[319] For purposes of Regulation SB SEF, proposed Rule 800 would define the term "control" or any derivatives thereof as the direct or indirect possession 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. Proposed Rule 800 would provide that a person would be presumed to control another person if the person: (1) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions); (2) directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (3) in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25% or more of the capital. *See* Instructions to Form 1.

[320] *See* proposed Rule 801(e).

the SB SEF that would impact the ability of or the manner in which any such person consents to or provides the Commission prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, or impacts the Commission's ability to inspect and examine any such person with respect to the activities of the SB SEF.[321] Such amendment would be required to include a revised opinion of counsel pursuant to Exhibit P describing how, as a matter of law, any person that controls the SB SEF would continue to meet its obligations to consent to and provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, and to consent to and be subject to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF under such new legal or regulatory framework.[322] The Commission emphasizes that the proposed provisions would be applicable only to those books and records or activities that are related to the activities of the SB SEF. The Commission believes that it is important for the SB SEF to have access to books and records that are related to the activities of a SB SEF and to have examination and inspection authority with respect to activities of a SB SEF, in order for a SB SEF to be able to effectively carry out its regulatory responsibilities. Similarly, the Commission believes that it is important for the Commission to have access to those books and records and such examination and inspection authority so that it may effectively conduct its oversight and regulatory responsibilities under the Exchange Act.

Proposed Rule 801(f) would require that any non-resident person [323] seeking to register as a SB SEF certify on Form SB SEF and provide an opinion of counsel that the SB SEF can, as a matter of law, (1) provide the Commission with prompt access to the books and records of such SB SEF and (2) submit to onsite inspection and examination by representatives of the Commission.[324]

The Commission preliminarily believes that before granting registration to a non-resident SB SEF, it is appropriate to obtain assurance that such person is legally permitted to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission. Similarly, the Commission preliminarily believes that before granting registration to a SB SEF controlled by another person, it is appropriate to obtain assurance that the person controlling such SB SEF is legally permitted to provide the Commission with prompt access to its books and records related to the SB SEF and to be subject to inspection and examination by the Commission with respect to activities of the SB SEF. The Commission preliminarily believes that the certifications and opinions of counsel required by proposed Rules 801(e) and (f) would be important to confirm that each non-resident SB SEF or control person of a SB SEF has taken the necessary steps to be in the position to provide the Commission with prompt access to its books and records and to be subject to inspection and examination by the Commission. Certain foreign jurisdictions may have laws that complicate the ability of financial institutions, such as SB SEFs located in their jurisdictions, from sharing or transferring certain information, including personal financial data of individuals that financial institutions come to possess from third parties (*i.e.,* personal data relating to the identity of market participants or their customers). Providing an opinion of counsel that the SB SEF can provide prompt access to books and records and can be subject to inspection and examination would allow the Commission to better evaluate a SB SEF's ability to meet the requirements of registration and ongoing supervision. In addition, certain persons controlling a SB SEF may not be under the jurisdiction of the Commission or may be non-resident persons. Providing an opinion of counsel that such control persons have consented to and can provide prompt access to books and records and be subject to inspection and examination would help the Commission to monitor and oversee individuals that control SB SEFs in cases where such individuals may not otherwise subject to the jurisdiction of the Commission or may be subject to foreign jurisdictions. Failure to make these certifications or provide an opinion of counsel may be a basis for the Commission to deny an application for registration. Similarly, if a registered non-resident SB SEF or a registered SB SEF that is controlled by another person becomes unable to comply with these certifications or provide such opinions of counsel, then this may be a basis for the Commission to revoke the SB SEF's registration.[325]

The Commission requests comments on all aspects of the proposed rules relating to non-resident persons and applicants controlled by other persons seeking to register as SB SEFs. Is the Commission's proposed rule regarding service of process appropriate and sufficiently clear? If not, why not and what would be a better alternative? Should the Commission impose any minimum requirements on the agent whom a person designates to accept any notice or request for service of process? Are there any factors that the Commission should take into consideration to help provide effective service of process on a non-resident person or a person controlled by another person applying for registration as a SB SEF?

If a non-resident SB SEF that is registered in a similar capacity in a foreign jurisdiction seeks to apply for registration as a SB SEF with the Commission, should the registration process for the non-resident SB SEF be any different than the Commission's proposed registration process? For example, should the registration process incorporate additional registration requirements for such non-resident SB SEF? Should the Commission consider any other factors relating to a non-resident SB SEF with respect to the Commission's registration rules or in general?

Are there any factors that the Commission should take into consideration to ensure that a non-resident person seeking to register as a SB SEF can, in compliance with applicable foreign laws, provide the Commission with access to its books and records and can submit to inspection and examination by the Commission? Should such a non-resident person be required to provide any additional information or documents on proposed Form SB SEF to establish its ability to comply with the Federal securities laws and the rules and regulations thereunder?

Are there any factors that the Commission should take into consideration to ensure that a person controlling a person seeking to register as a SB SEF can provide the Commission with access to its books

[321] *See* proposed Rule 802(c).

[322] *Id.*

[323] The term "non-resident person" would be defined to mean: (1) In the case of an individual, one who resides in or has his principal place of business in any place not in the United States; (2) in the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; and (3) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not in the United States. *See* proposed Rule 800.

[324] *See* proposed Rule 801(f).

[325] *See* proposed Rule 804(d) and discussion *infra* Section XXI.C.

and records and can submit to inspection and examination by the Commission? Should such control persons or the SB SEFs which they control be required to provide any additional information or documents on proposed Form SB SEF to establish the ability of the SB SEF to comply with the Federal securities laws and the rules and regulations thereunder? For example, should a SB SEF controlled by another person be required to provide on proposed Form SB SEF a copy of the document evidencing the consent by the controlling person to the books and records and examination and inspections requirements contained in proposed Rule 801(e)?

B. Proposed Filing Requirements for Maintaining SB SEF Registration

Proposed Rule 802 under Regulation SB SEF would require SB SEFs registered with the Commission to submit certain amendments and updates to Form SB SEF. Proposed Rule 803 under Regulation SB SEF would require SB SEFs registered with the Commission to file certain supplemental information with respect to the trading of SB swaps.

Proposed Rule 802(a) would require a SB SEF to file an amendment to its Form SB SEF promptly, but in no event later than five business days, after discovering that any information filed on Form SB SEF, any statement therein, or any exhibit or amendment thereto, was inaccurate when filed in order to correct such inaccuracies.

Proposed Rule 802(b) would require a registered SB SEF to file an amendment on Form SB SEF with the Commission within five business days after any action is taken that renders inaccurate, or that causes to be incomplete, any information filed on the Execution Page of the SB SEF's Form SB SEF, or any amendment thereto, or any information filed as part of Exhibits C, E, G, or N,[326] or any amendments thereto.[327] Any such amendments must set forth the nature and effective date of the action taken, provide any new information, and correct any information rendered inaccurate. Proposed Rule 802(c) would require a SB SEF that is under the control of any other person to file an amendment to Exhibit P to its Form SB SEF within 5 business days after any changes in the legal or regulatory framework of any person that controls the SB SEF that would impact the ability of or the manner in which any such person consents to or provides the Commission prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, or impacts the Commission's ability to inspect and examine any such person with respect to the activities of the SB SEF.[328] Such amendment would be required to include a revised opinion of counsel pursuant to Exhibit P describing how, as a matter of law, any person that controls the SB SEF will continue to meet its obligations to consent to and provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, and to consent to and be subject to onsite inspection and examination by representatives of the Commission under such new legal or regulatory framework.[329] Proposed Rule 802(d) would require non-resident SB SEFs to file an amendment to Exhibit P to their Form SB SEF within five business days after any changes in legal or regulatory framework that would impact the SB SEF's ability to or the manner in which it provides the Commission prompt access to its books and records or impacts the Commission's ability to inspect and examine the SB SEF.[330] Such amendment would be required to include a revised opinion of counsel describing how, as a matter of law, the entity will continue to: (1) meet its obligations to provide the Commission with prompt access to its books and records and (2) be subject to onsite inspection and examination by representatives of the Commission under such new legal or regulatory framework.[331]

The Commission preliminarily believes that it is appropriate to require the updating of only the Execution Page and Exhibits C, E, G, and N to proposed Form SB SEF on a continuous basis. The exhibits required to be updated pursuant to proposed Rule 802(b) are substantially similar to the exhibits to Form 1 required to be updated on a continuous basis by national securities exchanges pursuant to Rule 6a–2 under the Exchange Act.[332] The Commission believes that it is important for the Commission to receive updates to the information included in the enumerated exhibits, namely information regarding a SB SEF's governance, ownership, operations, and criteria used to determine the SB swaps that may be traded on the SB SEF, on a real-time basis to allow the Commission to effectively oversee SB SEFs to ensure compliance with the Exchange Act. The Commission also believes that it is important for the Commission to receive updated opinions of counsel under Exhibit P pursuant to proposed Rules 802(c) and (d) to ensure that the Commission can oversee and ensure compliance with the Exchange Act of non-resident SB SEFs and control persons of SB SEFs. Although the comparable amendments to the Form 1 for national securities exchanges are required to be filed within 10 days pursuant to Rule 6a–2, given the improvements in technology since the adoption of Rule 6a–2, the Commission preliminarily believes that five business days should provide SB SEFs sufficient time to prepare and file a Form SB SEF amendment. In addition, the proposed time frame would ensure that the relevant exhibits remain timely and that the Commission has up-to-date information in a timely manner.

Proposed Rule 802(e) also would provide that if the number of changes to be reported in an amendment, or the number of amendments filed, are so great that the purpose of clarity will be promoted by the filing of a new complete Form SB SEF and exhibits, a SB SEF may elect to, or upon request of any representative of the Commission shall, file as an amendment a complete new Form SB SEF together with all exhibits thereto.

Under proposed Rule 802(f), a registered SB SEF would be required to update its Form SB SEF on an annual basis. Specifically, within 60 days of the end of its fiscal year, a registered SB SEF would be required to file an amendment to its Form SB SEF to update the Form SB SEF in its entirety.[333] Each exhibit to the amended Form SB SEF would be required to be up-to-date as of the end of the latest fiscal year of the SB SEF.[334] The purpose of this requirement is to provide the Commission and the public with updated information on all the exhibits required in the Form SB SEF, particularly those exhibits that are not otherwise required to be updated under proposed Rules 802(b), (c) and (d), on an annual basis. The Commission preliminarily believes that a 60-day filing deadline would give SB SEFs sufficient time in which to file an annual amendment to Form SB SEF.

[326] These exhibits pertain to the list of officers, governors and committees of the SB SEF (Exhibit C), ownership of the SB SEF (Exhibit E), certain material operating agreements (Exhibit G), and criteria for determining what securities may be traded (Exhibit N).

[327] *See* proposed Rule 802(b).

[328] *See* proposed Rule 802(c).

[329] *Id.*

[330] *See* proposed Rule 802(d).

[331] *Id.*

[332] 17 CFR 240.6a–2.

[333] *See* proposed Rule 802(f).

[334] *See id.*

Proposed Rule 803 would require a registered SB SEF to file with the Commission any material relating to the trading of SB swaps (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to SB SEF participants. A SB SEF would be required to file such supplementary material with the Commission upon issuing or making the material available to SB SEF participants.[335] However, if such information is available continuously on an Internet Web site controlled by the SB SEF, the SB SEF may indicate to the Commission the location of the Web site and certify that such information is accurate instead of filing with the Commission.[336]

The Commission preliminarily believes that the amendments required by proposed Rule 802 and the supplemental material required by proposed Rule 803 would provide a useful tool for the Commission to carry out its oversight of SB SEFs and their compliance with the Exchange Act and the rules and regulations thereunder. Requiring SB SEFs to provide consistent and up-to-date disclosures about significant changes in their governance, ownership, operations and criteria used to determine the SB swaps that may be traded on the SB SEF, and requiring non-resident SB SEFs and SB SEFs controlled by another person to update the opinion of counsel whenever changes in legal or regulatory framework would impact their ability to comply with proposed Rules 801(e) and (f), respectively, pursuant to proposed Rules 802(b), (c) and (d) would provide the Commission with important information in monitoring whether a SB SEF is in compliance with the Core Principles throughout its fiscal year. Requiring a SB SEF to update its Form SB SEF and the exhibits thereto on an annual basis pursuant to proposed Rule 802(f) would provide updated information on the parts of the Form SB SEF that are not required to be updated within five business days and thus enable the Commission to have a full picture of the changes at a SB SEF on a year-to-year basis. Requiring SB SEFs to provide to the Commission material made available to SB SEF participants regarding the trading of SB swaps pursuant to proposed Rule 803 would provide the Commission with important information to monitor the trading of SB swaps on the SB SEF and whether such trading is being conducted in compliance with the Federal securities laws and the rules and regulations thereunder.

Providing the Commission with the necessary information it needs to effectively regulate SB SEFs and the trading of SB swaps on SB SEFs is especially important because SB SEFs would be new entities and SB SEFs, and the trading of SB swaps on SB SEFs, would be newly regulated by the Commission. The operation of SB SEFs and trading of SB swaps on SB SEFs is likely to change as the regulated market for SB swaps and the trading of SB swaps on trading venues regulated by the Commission continue to develop. The proposed amendments to Form SB SEF, including the proposed annual update, and the proposed supplemental information filing, would help the Commission keep abreast of the changes that may occur with respect to the trading of SB swaps on SB SEFs, and the operation and ownership of SB SEFs, and thus should enable the Commission to more effectively regulate the trading of SB swaps and SB SEFs.

The Commission requests comments on all aspects of the proposed rules relating to required amendments and updates to proposed Form SB SEF and the required filing of supplemental information. Are the Commission's proposed rules appropriate and sufficiently clear? If not, why not and what would be a better alternative? Are the exhibits to proposed Form SB SEF that would require prompt updating pursuant to proposed Rule 802(b) appropriate? Are there other exhibits to Form SB SEF that should be updated on a continuous basis? Are there exhibits that should not be updated on a continuous basis? Is it appropriate to require SB SEF's to update their registration statement annually? Would a different time period be more appropriate? What would be the cost to SB SEFs of the proposed rules requiring amendments?

Is the material required to be filed pursuant to proposed Rule 803 appropriate? Is there other information that the Commission should require to be filed with respect to the trading of SB swaps? Is there information that the Commission should not request? Should the Commission request any information at all? Is it appropriate, in lieu of requiring a SB SEF to file supplemental material with the Commission pursuant to proposed Rule 803(a), to allow the SB SEF to direct the Commission to a Web site where such information is located and certify that the information is accurate pursuant to proposed Rule 803(b)? Should the Commission make such an allowance for SB SEFs with respect to required amendments pursuant to proposed Rule 802?

C. Withdrawal or Revocation of Registration of SB SEF

Proposed Rule 804 under Regulation SB SEF would permit a registered SB SEF to withdraw from registration by filing a written notice of withdrawal with the Commission, which notice must designate a person associated with the SB SEF to serve as the custodian of the SB SEF's books and records.[337] Prior to filing a notice of withdrawal, a SB SEF would be required to file an amended Form SB SEF to update any inaccurate information.[338] A notice of withdrawal from registration filed by a SB SEF would become effective on the 60th day after the filing thereof with the Commission, or within such longer period of time as to which such SB SEF consents or which the Commission, by order, may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine.[339]

The Commission preliminarily believes that is appropriate to provide for a mechanism for SB SEFs to withdraw from registration. In addition, the Commission preliminarily believes that 60 days following notice of withdrawal is an appropriate effective date for any SB SEF registration withdrawal. Providing a period between filing of notice of withdrawal and the effective date of any withdrawal should enable the Commission to allow a SB SEF to withdraw its registration with the Commission and cease operating as a SB SEF and market participants to react to any such withdrawal without dislocating the SB swap market or causing any other unintended consequences with respect to the trading of SB swaps.

Proposed Rule 804(d) would provide that the Commission may, by order, revoke the registration of a registered SB SEF if the Commission finds, on the record after notice and opportunity for hearing, that the SB SEF obtained its registration by making false or misleading statements with respect to any material fact or has violated or failed to comply with any provision of the Federal securities laws or the rules

[335] *See* proposed Rule 803(a).

[336] *See* proposed Rule 803(b).

[337] *See* proposed Rule 804(a). A notice of withdrawal filed pursuant to proposed Rule 804 would be considered a "report" filed with the Commission for purposes of Sections 18(a) and 32(a) of the Exchange Act and the rules and regulations thereunder. *See* proposed Rule 804(c). *See also supra* note 303.

[338] *See* proposed Rule 804(a).

[339] *See* proposed Rule 804(b).

and regulations thereunder.[340] Pending a final determination as to whether the registration of a SB SEF shall be revoked, the Commission may, by order, suspend the registration of the SB SEF if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.[341] The Commission believes that it is appropriate to provide a mechanism for the Commission to revoke a SB SEF's registration if a SB SEF obtained its registration unlawfully or has violated the Federal securities laws or rules or regulations thereunder.

Proposed Rule 804(e) would provide that the Commission may, by order, cancel the registration of a SB SEF if the Commission finds that the SB SEF is no longer in existence or has ceased to do business in the capacity specified in its application for registration.[342] The Commission believes that it is appropriate to provide a mechanism for the Commission to cancel a SB SEF's registration if a SB SEF is no longer in existence or has ceased to do business in the manner set forth in the registration application.

The Commission requests comments on all aspects of the proposed rule relating to withdrawal or revocation of registration. Is the Commission's proposed rule regarding the withdrawal, revocation and cancellation of a SB SEF's registration appropriate and sufficiently clear? If not, why not and what would be a better alternative? Should a SB SEF be required to file an amendment on Form SB SEF before withdrawing its registration? If not, why not and what would be a better alternative? Should the Commission require a SB SEF to file a form to request withdrawal of registration? If so, why and what should the SB SEF be required to disclose in the form? Should this form be required in lieu of or in addition to an amendment on Form SB SEF? Is the proposed effective date of 60 days from the filing of the notice of withdrawal with the Commission appropriate? If not, would an earlier or later date be more appropriate? Are the findings required by the Commission to revoke, suspend or cancel a SB SEF's registration appropriate? Are any other instances not specified in this proposed rule in which the Commission should revoke, suspend or cancel a SB SEF's registration?

[340] *See* proposed Rule 804(d).

[341] *Id.*

[342] *See* proposed Rule 804(e).

XXII. New Proposed Form SB SEF for the Registration of Security-Based Swap Execution Facilities

The Commission is proposing that applications for registration as a SB SEF, and amendments to such registration, be submitted on new proposed Form SB SEF. Proposed Form SB SEF is similar in style and format to the existing Form 1 for registration as a national securities exchange. Proposed Form SB SEF, however, is tailored to solicit information that the Commission believes would be useful for considering whether a SB SEF meets the requirements for registration in Section 3D of the Exchange Act, including whether the SB SEF can comply with the Core Principles contained in Section 3D(d) of the Exchange Act, and the rules thereunder, including proposed Regulation SB SEF.

The Execution Page to proposed Form SB SEF would require an applicant to provide certain identifying information. The Execution Page would include a box for the applicant to indicate whether the applicant was seeking consideration for temporary registration pursuant to proposed Rule 801(c). In addition, the Execution Page would require the applicant to designate and authorize an individual, other than a Commission official, for service of process, pleadings, or other documents in connection with any action or proceeding against the applicant, as required by proposed Rule 801(d).

The Execution Page to proposed Form SB SEF further would require the applicant to certify that the statements contained therein are current, true and complete, and that the applicant is currently in compliance with, and is currently operating its business in a manner consistent with, the Exchange Act and all rules and regulations thereunder. The applicant also would be required to certify that it is so organized, and has the capacity, to assure the prompt, accurate, and reliable performance of its functions as a SB SEF, and that it has the capacity to fulfill its obligations under all international information-sharing agreements to which it is a party. In addition, the applicant would be required to certify that any person that controls the applicant has consented to and can, as a matter of law, (1) provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility; and (2) submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF, as required by proposed Rule 801(e). Finally, the applicant would be required to certify that, if it is a non-resident person, it can, as a matter of law, (1) provide the Commission with prompt access to its books and records and (2) submit to an onsite inspection and examination by representatives of the Commission, as required by proposed Rule 801(f).

Proposed Exhibit A to Form SB SEF would require the applicant to provide a copy of the governing documents of the applicant, including but not limited to a corporate charter, articles of incorporation or association, limited liability company agreement, or partnership agreement, with all subsequent amendments, and by-laws or corresponding rules or instruments, whatever the name, of the applicant. This information is intended to be used to assess the applicant's compliance with Core Principle 1 (Compliance with Core Principles), Core Principle 2 (Compliance with Rules), and Core Principle 11 (Conflicts of Interest). The information provided in this proposed exhibit is designed to allow the Commission to confirm that the applicant has the appropriate authority to operate the trading system and to regulate its participants, and that the ownership structure is consistent with the Exchange Act and the rules and regulations thereunder relating to the governance of SB SEFs.

Proposed Exhibit B to Form SB SEF would require the applicant to provide a copy of all written rulings, settled practices having the effect of rules, stated policies and interpretations of the Board or other committee of the applicant in respect of any provisions of the governing documents, rules or trading practices of the applicant which are not included in Exhibit A. This information required in proposed Exhibit B would be critical to the Commission's ability to assess the applicant's compliance with all of the Core Principles that require SB SEFs to establish and enforce rules relating to a variety of matters (*e.g.,* Core Principle 2 (Compliance with Rules); Core Principle 4 (Monitoring of Trade and Trade Processing); Core Principle 5 (Ability to Obtain Information); Core Principle 6 (Financial Integrity of Transactions); Core Principle 7 (Emergency Authority); Core Principle 10 (Antitrust Considerations); and Core Principle 11 (Conflicts of Interest)). Consequently, the Commission believes that such information is necessary for the Commission to confirm that the applicant's rules meet the requirements of those Core Principles and of the Exchange Act and the rules and

regulations thereunder, including proposed Regulation SB SEF.

Proposed Exhibit C to Form SB SEF would require the applicant to provide a list of the officers and directors of the SB SEF, or persons performing similar functions, who presently hold or have held their offices or positions during the previous year, and a list of all standing committees and their members, indicating the following for each: their name and title; date of commencement and termination of term of office or position; the type of business in which each is primarily engaged (*e.g.,* SB swap dealer, major SB swap participant, inter-dealer broker, end-user *etc.*); and, if such person is a director, whether such director qualifies as an "independent director" pursuant to proposed Rule 800 under Regulation SB SEF and whether such director is a member of any standing committees or committees that have the authority to act on behalf of the Board or the nominating committee. The Commission believes that mandating SB SEFs to disclose this information should better inform the Commission about SB SEF officers, the persons responsible for the day-to-day operation of the SB SEF, and SB SEF directors, the persons that comprise the Board. In addition, the Commission believes that the information required in Exhibit C is necessary for the Commission to determine the applicant's compliance with the governance requirements of Core Principle 11 (Conflicts of Interest) and the proposed rules under Regulation SB SEF relating thereto, and would aid the Commission in ascertaining any affiliations and relationships that would preclude directors from being considered independent.

Proposed Exhibit D to Form SB SEF would require an applicant to provide a chart or charts illustrating fully the internal organizational structure of the SB SEF. The charts would need to indicate the internal divisions or departments, the responsibilities of each such division or department, and the reporting structure of each division or department, including its oversight by committees or their equivalent. The charts should be sufficiently detailed to permit the Commission and the public to gain a complete understanding of the manner in which the SB SEF is structured and should be able to provide the Commission with an overview of the entity's organizational structure. The Commission preliminarily believes that disclosure of these organizational charts would be an important means by which to provide the Commission with a better understanding of the governance structure of the SB SEF and would enable the Commission to determine the applicant's compliance with Core Principle 11 (Conflicts of Interest) and the proposed rules under Regulation SB SEF relating thereto. In addition, the Commission preliminary believes that these organizational charts would inform the Commission's view on the ability of the SB SEF to carry out its regulatory and oversight responsibilities with respect to its markets.

Proposed Exhibit E to Form SB SEF would require an applicant to provide certain ownership information. Specifically, Exhibit E would require a list of each person that has a direct or indirect ownership or voting interest in the SB SEF that equals or exceeds 5%, and a list of all related persons of such persons that have an ownership or voting interest in the SB SEF or that are SB SEF participants. For each of the persons and related persons listed in the Exhibit E, an applicant would also need to provide such person's name, title or legal status and whether such person is a SB SEF participant; the date such title, status or participation in a SB SEF was acquired or commenced; the percentage ownership interest held; the type of ownership held, including whether such ownership interest qualifies as "beneficial ownership" under proposed Rule 800 or is entitled to vote; the percentage of voting interest held; and the type of voting interest held. The purpose of this information is to provide the Commission, participants of the SB SEF, and investors with detailed information about which persons or groups of persons potentially could control or influence the SB SEF. In addition, the information proposed to be required by Exhibit E relating to ownership of a SB SEF would provide the Commission, as well as participants in the SB SEF, with up-to-date information regarding a change or potential change in control of a SB SEF. The Commission expects that the disclosure of information concerning persons that hold ownership or voting interests of more than 5% of a SB SEF should help the Commission more effectively oversee and regulate SB SEFs, especially if the SB SEF is owned or controlled by persons who are not regulated by the Commission.

Proposed Exhibit F to Form SB SEF would require an applicant to provide, for the latest two fiscal years of the applicant, audited financial statements, which would be prepared in accordance with the same requirements for the preparation of financial statements submitted pursuant to the proposed rules under Regulation SB SEF relating to Core Principle 14.[343] The Commission preliminarily believes that this information would enable the Commission to assess the applicant's compliance with Core Principle 12 (Financial Resources) and the proposed rules under Regulation SB SEF relating thereto. In addition, the Commission believes that disclosure of audited financial statements would permit the Commission to better understand the financial resources and decisions of SB SEFs. The Commission preliminarily believes that these statements should be submitted by SB SEFs pursuant to Form SB SEF in addition to the rules relating to Core Principle 14, because documents submitted pursuant to Form SB SEF will be disclosed to the public. This would allow the public to be informed about the financial position of these SB SEFs and should facilitate investor confidence in the markets. In addition, because Exhibit F and the rules relating to Core Principle 14 have the same requirements with respect to the preparation and presentation of such financial statements, this should not create an additional burden on SB SEFs.

Proposed Exhibit G to Form SB SEF would require an applicant to provide an executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, or a subsidiary or an affiliate of the applicant, including partnership or limited liability company, third-party regulatory service, or other agreements relating to the operation of an electronic trading system to be used to effect transactions on the SB SEF ("System") that enable or empower the applicant to comply with Section 3D of the Exchange Act. The Commission believes that the provision of these material agreements would be useful for the Commission and the public. They would enable the Commission to understand how and through what parties the System is being operated and to have a better understanding of the arrangements that the SB SEF has entered into to meet its obligations under the Exchange Act. The information required in this exhibit would allow the Commission generally to ascertain the applicant's compliance with all Core Principles.

Proposed Exhibit H to Form SB SEF would require an applicant to provide unconsolidated financial statements (in English) for the latest two fiscal years for every subsidiary in which the applicant has, directly or indirectly, a 25% interest and every entity that has, directly or indirectly, a 25% interest in

[343] *See supra* Section XX.C for a discussion of the financial statement requirements pursuant to Core Principle 14. *See also* proposed Rule 823.

the applicant, which would be prepared in accordance with the same requirements for the preparation of financial statements submitted pursuant to the proposed rules under Regulation SB SEF relating to Core Principle 14.[344] Such financial statements would be required to contain such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading, and be provided in eXtensible Business Reporting Language consistent with Rules 405(a)(1), (a)(3), (b), (c), (d), and (e) of Regulation S–T.[345] In addition to the foregoing, for all other affiliates of the applicant not listed, such information would be required to be made available to the Commission upon request.[346] The Commission preliminarily believes that the information required in this exhibit would allow the Commission to assess the SB SEF's compliance with Core Principle 12 (Financial Resources) and the proposed rules under Regulation SB SEF relating thereto. In addition, the Commission believes that the required financial statement would enable the Commission to better understand the financial resources and decisions of SB SEFs and their affiliates. Finally, while evaluating an applicant's registration application on Form SB SEF, the Commission may determine that additional affiliates of the applicant that do not meet the 25% threshold may be material to the applicant's operation as a SB SEF. Therefore, the Commission preliminarily believes that it is appropriate to require an applicant to provide financial information regarding other affiliates upon request of the Commission.

Proposed Exhibit I to Form SB SEF would require an applicant to describe the manner of operation of the System. This description would be required to include: (1) A detailed description of the manner in which the System satisfies the definition of "security-based swap execution facility" in Section 3(a)(77) of the Exchange Act and any Commission rules, interpretations or guidelines regarding such definition, including a description of how the System displays all orders, quotes, requests for quote, responses, and trades in an electronic or other form, and the timelines in which the system does so; how trading interest interacts on the System; the ability of market participants to see and transact with orders, quotes, requests for quotes, and responses; and an explanation of the trade-matching algorithm if it is based on order priority factors other than price and time; (2) the means of access to the System, including any limitations on access; (3) procedures governing entry and display of trading interest in the System; (4) procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System; (5) proposed fees; (6) procedures for ensuring compliance with System usage guidelines and rules; (7) the hours of operation of the System, and the date on which the applicant intends to commence operation of the System; (8) a copy of the users' manual or equivalent document; (9) if applicant proposes to hold funds or securities on a regular basis, a description of the controls that would be implemented to ensure safety of those funds or securities; and (10) the name of any entity, other than the SB SEF, that will be involved in operation of the System, including the execution, trading, clearing and settling of transactions on behalf of the SB SEF, and a description of the role and responsibilities of each entity.

The Commission believes that Exhibit I would allow the Commission to determine if the applicant meets the definition of SB SEF under the Exchange Act and rules and regulations hereunder, and in accordance with the guidance set forth in Section III above. In addition, Exhibit I would address the applicant's compliance with several Core Principles, including Core Principle 1 (Compliance with Rules), Core Principle 4 (Monitoring of Trade & Trade Processing), Core Principle 6 (Financial Integrity of Transactions), Core Principle 8 (Timely Publication of Trading Information), Core Principle 9 (Recordkeeping and Reporting), and Core Principle 13 (System Safeguards), and the proposed rules under Regulation SB SEF relating to such Core Principles.

Proposed Exhibit J to Form SB SEF would require an applicant to provide a complete set of all forms pertaining to: (1) Applications for participation or subscription to or use of the SB SEF; (2) applications for approval as a person associated with a SB SEF participant, or user of the SB SEF; and (3) any other similar materials. The applicant would have to provide a table of contents listing the forms included. The Commission believes that the information required in proposed Exhibit J would provide the Commission with important information on the ability of persons to directly access the SB SEF. Such information would enable the Commission to assess the applicant's compliance with Core Principle 2 (Compliance with Rules), Core Principle 5 (Ability to Obtain Information), and Core Principle 6 (Financial Integrity of Transactions) and the proposed rules under Regulation SB SEF related to such Core Principles.

Proposed Exhibit K to Form SB SEF would require an applicant to provide a complete set of all forms of financial statements, reports, or questionnaires required of SB SEF participants, subscribers or any other users relating to financial responsibility or minimum capital requirements for such participants or any other users. The applicant also would have to provide a table of contents listing the forms included. The Commission preliminarily believes that the information collected in this proposed exhibit would provide the Commission with the financial information that SB SEF's require of their participants and users and enable the Commission to assess the applicant's compliance with Core Principle 6 (Financial Integrity of Transactions) and the proposed rules under Regulation SB SEF related thereto.

Proposed Exhibit L to Form SB SEF would require an applicant to describe the applicant's criteria for participation in or use of the SB SEF. The applicant would be required to describe conditions under which SB SEF participants or persons associated with SB SEF participants may be subject to suspension or termination with regard to access to the SB SEF, and any procedures that would be involved in the suspension or termination of a SB SEF participant or person associated with a SB SEF participant. Proposed Exhibit L would require a SB SEF to provide a list of all grants of access (including, for all participants, the reasons for granting such access) and all denials or limitations of access (including, for each applicant or participant, the reasons for denying or limiting access). In addition, proposed Exhibit L would require a SB SEF to provide a list of all disciplinary actions taken by the SB SEF. The Commission preliminarily believes that proposed Exhibit L would provide the Commission with information regarding access to, limitations of access by, and

[344] *See supra* Section XX.C for a discussion of the financial statement requirements pursuant to Core Principle 14. *See also* proposed Rule 823.

[345] These requirements are the same as the requirements for the preparation of financial statements for affiliated entities that would be submitted pursuant to the proposed rules under Regulation SB SEF relating to Core Principle 14. *See supra* Section XX.C for a discussion of the financial statement requirements pursuant to Core Principle 14.

[346] This requirement to provide the information for all other affiliates of the applicant upon request is not contained in the rules under Regulation SB SEF relating to Core Principle 14, as the financial report submitted by the SB SEF pursuant to such rules is an annual report, rather than a registration application.

denials of access by a SB SEF, and disciplinary actions taken by a SB SEF against participants, and would allow the Commission to ascertain the applicant's compliance with Core Principle 2 (Compliance with Rules) and Core Principle 4 (Monitoring of Trading and Trade Processing) and the proposed rules under Regulation SB SEF relating to such Core Principles.

Proposed Exhibit M to Form SB SEF would require an applicant to provide an alphabetical list of all SB SEF participants or other users of the SB SEF, including the following information: name; date of acceptance as a participant or other user; principal business address and telephone number; if participant or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (*e.g.,* partner, officer, director, employee, *etc.*); a description of the type of activities primarily engaged[347] in by the participant or other user (*e.g.,* SB swap dealer, major SB swap participant, inter-dealer broker, non-broker dealer, non-security-based swap dealer, commercial end-user, inactive or other functions); and the class of participation or other access. The Commission preliminarily believes that this exhibit would provide the Commission with information relating to who has access to trading on the SB SEF and would enable the Commission to determine whether a SB SEF is in compliance with Core Principle 2 (Compliance with Rules), Core Principle 6 (Financial Integrity of Transactions) and Core Principle 11 (Conflicts of Interest) and the proposed rules under Regulation SB SEF related to such Core Principles.

Proposed Exhibit N to Form SB SEF requires an applicant to provide a description of the criteria used to determine the SB swaps that may be traded on the SB SEF. The Commission preliminarily believes that this requirement would provide the Commission with information regarding the process by which a SB SEF determines what SB swaps would be traded on the SB SEF and the factors the SB SEF would consider in making such determination. Proposed Exhibit O to Form SB SEF requires an applicant to provide a schedule of the SB swaps to be traded on the SB SEF, including a description of each SB swap. The Commission believes that proposed Exhibits N and O would enable the Commission to determine whether a SB SEF is complying with Core Principle 2 (Compliance with Rules), Core Principle 6 (Financial Integrity of Transactions) and Core Principle 3 (Security-based Swaps not Readily Susceptible to Manipulation) and the proposed rules under Regulation SB SEF relating to such Core Principles.

Proposed Exhibit P to Form SB SEF would require an applicant that is controlled by any other person to provide an opinion of counsel that any person that controls the SB SEF has consented to and can, as a matter of law, (1) provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF; and (2) submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF. Proposed Exhibit P to Form SB SEF also would require an applicant that is a non-resident person to provide an opinion of counsel that the applicant can, as a matter of law, (1) provide the Commission with prompt access to the books and records of such applicant and (2) submit to onsite inspection and examination by representatives of the Commission. As discussed in Section XXI above, these requirements would allow the Commission to better evaluate an applicant's ability to comply with the books and records and inspection requirements set forth in proposed Rules 801(e) and (f).

A national securities exchange that seeks to operate a SB SEF would be required to separately register such SB SEF with the Commission as a SB SEF pursuant to proposed Rule 801 and proposed Form SB SEF, and would be required to comply with Section 3D of the Exchange Act, the rules and regulations thereunder, and any other provisions of the Exchange Act and rules thereunder applicable to SB SEFs with respect to the operations of such SB SEF.

National securities exchanges could, under the rules the Commission is proposing today, form subsidiaries or affiliates that operate SB SEFs. If a national securities exchange chose to form such a subsidiary or affiliate, the exchange itself could remain registered as a national securities exchange, while the subsidiary or affiliate registers and operates as a SB SEF. Section 3D(c) of the Exchange Act requires a national securities exchange to identify whether electronic trading of SB swaps is taking place on or through the national securities exchange or a SB SEF to the extent that the exchange also operates a SB SEF and uses the same electronic trade execution system for listing and executing trades of SB swaps. The Commission notes that any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link the SB SEF with the exchange, including using the premises or property of such exchange for effecting or reporting a transaction, without being considered a "facility of the exchange."[348] In the event that a national securities exchange begins trading SB swaps either on the exchange or on a facility of the exchange, it would be required to file rule filings under Rule 19b–4 under the Exchange Act in connection with the trading of SB swaps on the exchange or its facility, and such facility would have to comply with the provisions of the Exchange Act and the rules and regulations thereunder applicable to national securities exchanges.

The Commission generally requests comments on all aspects of the proposed Form SB SEF. Is the format of the proposed Form SB SEF appropriate and sufficiently clear? If not, why not and how could it be improved? Are the instructions to the proposed Form SB SEF appropriate and sufficiently clear? If not, why not and how could they be improved? Are the defined terms included on proposed Form SB SEF appropriate and sufficiently clear? If not, why not and how could they be improved?

Are the disclosure items contained on the Execution Page of the proposed Form SB SEF appropriate? Are there other useful disclosure items that should be added? If so, please describe such items and why they should be added. Or, are there proposed items on the Execution Page that should be deleted? If so, please describe why such items are not necessary. Are the certifications contained on the Execution Page of the proposed Form SB SEF appropriate? Are there other useful certifications that the Commission should require the applicant to make? If so, please describe such items and why they should be added. Or, are there proposed certifications that should be deleted? If so, please describe why such certifications are not necessary.

Are the proposed exhibits to the Form SB SEF appropriate? Would the

[347] A person would be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the types of activities or functions enumerated in this item, the applicant would be required to identify each type and state the number of participants or other users in each.

[348] *See* Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c(a)(2) (defining the term "facility of the exchange"). The Commission gave a similar analysis regarding facilities of exchanges with regard to ATSs in the ATS Adopting Release, *supra* note 94, at note 437.

information requested adequately allow the Commission to determine whether to grant or deny the registration of a SB SEF pursuant to proposed Rule 801(b)? Are there other useful disclosure items that should be added to the exhibits or added as exhibits? If so, please describe such items and why they should be added. Are there any registration requirements proposed by the CFTC for SEFs that the Commission should adopt for SB SEFs? [349] For example, should the Commission require a SB SEF to provide a description of material pending legal proceedings? [350] Should the Commission require a SB SEF to provide a description of the personnel qualifications for each category of professional employees employed by the applicant? [351] Should the Commission require a SB SEF to provide an analysis of the staffing requirements necessary to carry out operations of the applicant and the name and qualifications of each key staff person? [352] Is the information requested on Form SB SEF and the exhibits thereto overly burdensome for SB SEFs? If so, how could any such burdens be reduced? Are there proposed exhibits or items of information in proposed exhibits that should be deleted from proposed Form SB SEF? If so, please describe why such proposed exhibits would not be necessary. Should certain proposed exhibits be required to be made available to the Commission only upon request? If so, which proposed exhibits and why? For example, should an applicant be required to provide the information regarding SB SEF participants required by proposed Exhibit M upon request by the Commission following the filing of the applicant's Form SB SEF, rather than as an exhibit to the applicant's initial filing of proposed Form SB SEF? Commenters are requested to consider the totality of the information required by proposed Form SB SEF in framing their responses.

The Commission also requests that commenters address whether there are confidentiality issues with any information required by the proposed exhibits to proposed Form SB SEF? If so, what information presents issues and what are the issues? Further, the Commission notes that proposed Form SB SEF would be filed electronically and thus is expected to be made available publicly on the Commission's Web site. The Commission seeks comment on whether the information to be filed on proposed Form SB SEF would be useful to the public.

XXIII. Rule Filing Processes for Changes to a SB SEF's Rules

A. Introduction

The Commission is proposing to adopt rules requiring registered SB SEFs to comply with certain rule filing processes for any new rules or rule amendments. Specifically, the Commission is proposing new Rules 805 and 806, which set forth, respectively, a process for the voluntary submission of rules for Commission review and approval, and a self-certification rule filing process.[353] The processes proposed under these rules are substantially similar to the two rule filing processes that the CFTC has in its existing rules,[354] as modified by the new authority the CFTC has received under Section 745 of the Dodd-Frank Act.[355] It is important for the Commission to receive notice of proposed rule changes to understand how each SB SEF operates and is governed to help the Commission with its oversight of SB SEFs. The Commission intends to coordinate efforts with the CFTC, as appropriate, to have the processes offered in proposed Rules 805 and 806 resemble the rule filings processes that the CFTC ultimately adopts for SEFs, in large part to streamline and simplify compliance for joint SEF/SB SEF entities.

B. Voluntary Submission of Rules for Commission Review and Approval

Proposed Rule 805 gives a registered SB SEF the option of voluntarily submitting a proposed new rule or rule amendment for approval by the Commission prior to its implementation. Paragraph (a) of proposed Rule 805 would require such filings to: (1) Be filed electronically with the Commission in a format specified by the Commission; (2) set forth the text of the proposed rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated); (3) indicate the proposed effective date of the proposed rule, any action taken or anticipated to be taken to adopt the proposed rule by the SB SEF or by its governing board or by any committee thereof, and the cite for the rules of the SB SEF that authorize the adoption of the proposed rule change; (4) explain the operation, purpose, and effect of the proposed rule, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the SB SEF's framework of regulation; (5) certify that the SB SEF posted a notice of pending rule filing and a copy of the submission, concurrent with the filing of a submission on its Web site; (6) include the documentation relied on to establish the basis for compliance with the applicable provisions of the Exchange Act and the Commission's regulations thereunder, including the Core Principles; (7) provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment; (8) describe briefly any substantive opposing views expressed to the SB SEF by the Board or committee members, participants of the SB SEF, or market participants with respect to the new rule or rule amendment that were not incorporated into the new rule or rule amendment; (9) identify any Commission regulation that the Commission may need to amend, or sections of the Exchange Act or the Commission's regulations that the Commission may need to interpret, in order to approve the new rule or rule amendment; (10) in the case of proposed amendments to the terms and conditions of a SB swap product, include a written statement verifying that the registered SB SEF has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the product; and (11) request confidential treatment, if appropriate.[356]

Proposed Rule 805(a) sets forth the information a SB SEF would be required to provide the Commission when seeking Commission approval of a proposed change to a SB SEF rule, or a proposed change to the terms and conditions of a SB swap that has already commenced trading. Most of the proposed items of information to be included are substantially similar to the items of information a national securities exchange is required to provide on Form 19b–4 [357] when

[349] *See* Notice of proposed SEF rulemaking by the CFTC Release, *supra* note 17.

[350] *See* proposed Exhibit H to proposed Form SEF; *see also* Notice of proposed SEF rulemaking by the CFTC, *supra* note 17.

[351] *See* proposed Exhibit E to proposed Form SEF; *see also* Notice of proposed SEF rulemaking by the CFTC, *supra* note 17.

[352] *See* proposed Exhibit F to proposed Form SEF; *see also* Notice of proposed SEF rulemaking by the CFTC, *supra* note 17.

[353] Proposed Rule 806(d) also provides a limited exception to the certification requirement for certain kinds of filings. *See* proposed Rule 806(d). *See also* discussion *infra* notes 382 to 384 and accompanying text.

[354] 17 CFR 40.5 and 17 CFR 40.6.

[355] *See* Public Law 111–203 § 745 (amending Section 5c of the CEA, 7 U.S.C. 7a–2).

[356] *See* proposed Rule 805(a).

[357] *See* 17 CFR 240.19b–4.

seeking approval of a proposed rule change in accordance with Section 19(b) of the Exchange Act.[358] Specifically, the requirements in proposed Rule 805(a)(1) through (4) regarding electronic submission, submission of proposed rule text highlighting additions and deletions, inclusion of background information on how and why a proposed change is authorized, and explanation of the operation, purpose, and effect of the proposed rule change are similar to the requirements applicable to national securities exchanges seeking to implement a proposed rule change. Further, the requirements in proposed Rule 805(a)(7) through (9) to include additional information beneficial to the Commission in analyzing the new rule or rule amendment, a description of substantive opposing views expressed to the SB SEF regarding the proposal, and to identify any Commission regulation that the Commission may need to amend or interpret in order to approve the new rule or rule amendment also are similar to the requirements of Form 19b–4 applicable to national securities exchanges. These requirements are designed to ensure that a SB SEF seeking to implement a new or proposed rule change provides all relevant information and context regarding the proposal that would allow the Commission to evaluate the proposal for consistency with the Exchange Act and rules and requirements thereunder.

In addition, similar to the requirements for national securities exchanges, the proposal in Rule 805(a)(5) would require a SB SEF to certify that it has posted a notice of pending rule filing and a copy of the submission, concurrent with the filing of a submission on its Web site. This proposal is intended to ensure that market participants would receive prompt notice of new requests for approval filed with the Commission.[359]

Proposed Rule 805(a)(6) also would require a SB SEF to include the documentation relied on to establish the basis for compliance with the applicable provisions of the Exchange Act and the Commission's regulations thereunder, including the Core Principles. In the case of proposed changes to the terms and conditions of a SB swap, this provision would require, without limitation, inclusion of documentation relied on to establish the basis for compliance with Section 3D(d)(3) of the Exchange Act and proposed Rule 812 thereunder, which would require a SB SEF's swap review committee to have determined, after taking into account all of the terms and conditions of the SB swap and the markets for the SB swap and any underlying securities, that a SB swap proposed to be traded is not readily susceptible to manipulation.[360]

Also with regard to proposed changes to the terms and conditions of a SB swap, proposed Rule 805(a) would require a SB SEF to provide a written statement verifying that it has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading the product. This proposed requirement is designed to prevent a SB SEF from seeking to trade a proprietary product of another SB SEF or other entity. The Commission preliminarily believes that the information to be included pursuant to proposed Rule 805(a) in a request for approval of a new or proposed rule change or change to the terms and conditions of a SB swap is necessary to assist the Commission in making a reasoned determination as to whether such proposed change is consistent with the Exchange Act.

Proposed Rule 805(b) would require the Commission to approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Exchange Act or the Commission's regulations promulgated thereunder.[361] The Commission has coordinated with the CFTC and the proposed standard for approval is the same as that standard for approval under the CFTC's proposed rule approval process, which is intended to provide consistency to market participants who may operate a SB SEF and a SEF.

Proposed Rule 805(c) would give the Commission a 45-day review period, starting from the date that the filing is received by the Commission, to consider whether the proposed rule or rule amendment is consistent with the Exchange Act and the regulations thereunder.[362] Unless the Commission notifies the SB SEF otherwise, the proposed rule change would be deemed approved by the Commission at the end of the 45-day review period (or at the end of any extension period, as applicable), provided that: (1) The submission of the rule change complies with the requirements of paragraph (a) of proposed Rule 805, and (2) the SB SEF has not amended the filing during the review period, except as requested by the Commission during that period.[363]

Under paragraph (d) of proposed Rule 805, the Commission would be able to extend the review period by an additional 45 days if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner.[364] In this case, the Commission would be required to notify the submitting SB SEF within the initial 45-day review period and briefly describe the nature of the specific issues for which additional time for review is required. In addition, the Commission would be able to extend the review period to any period, beyond the additional 45 days initially requested, to which the SB SEF agrees in writing.[365]

Under paragraph (e) of proposed Rule 805, the Commission would have the authority to issue a notice of non-approval if it finds that the new rule or rule amendment is or appears to be inconsistent with the Exchange Act or the regulations thereunder.[366] At any time during its review under proposed Rule 805, the Commission would be able to notify the SB SEF that it will not approve the new rule or rule amendment because it believes that the new rule or rule amendment is inconsistent with the Exchange Act or Commission rules or regulations thereunder. The Commission would provide, in its notice, the nature of the issues raised and the specific provision of the Exchange Act or the Commission's rules or regulations with which the new rule or rule amendment is or appears to be inconsistent. Pursuant to proposed Rule 805(f), the receipt of a notice of non-approval would not prevent the SB SEF from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval, and the revised submission would be reviewed without prejudice.[367] However, the receipt of a notice of non-approval would be presumptive evidence that the SB SEF could not truthfully submit the same, or substantially the same, proposed rule or

[358] 15 U.S.C. 78s(b).

[359] Rule 19b–4(*l*) under the Exchange Act requires each national securities exchange to post proposed rule changes on its Web site within two business days of filing with the Commission. *See* 17 CFR 240.19b–4(*l*).

[360] *See* Proposed Rule 812.

[361] *See* proposed Rule 805(b).

[362] *See* proposed Rule 805(c).

[363] *Id.* Any amendment or supplementation not requested by the Commission would be treated as the submission of a new filing.

[364] *See* proposed Rule 805(d).

[365] *Id.*

[366] *See* proposed Rule 805(e).

[367] *See* proposed Rule 805(f)(1).

rule amendment for self-certification under proposed Rule 806.[368]

Proposed Rule 805(g) would allow the Commission to provide for expedited approval for rule changes, including rule changes to terms and conditions of a product that are consistent with the Exchange Act and the rules and regulations thereunder, at such time and under such conditions as the Commission may specify in a written notification.[369] However, proposed Rule 805(g) would also allow the Commission to grant expedited approval to a proposed rule or rule amendment, at any time, and also to alter or revoke the applicability of such a notice to any particular rule or rule amendment.

The Commission is proposing the time periods in paragraphs 805(c) through (g) to align its procedure for reviewing proposed rules and rule amendments with the CFTC's procedure.[370] The Commission believes that a parallel procedure would be beneficial for SB SEFs and SEFs that are dually registered. Furthermore, the Commission believes that the proposed prior approval process would allow the SB SEF the opportunity to achieve greater certainty about the Commission's views on whether a new rule or rule amendment is consistent with the Exchange Act and the rules and regulations thereunder prior to taking steps to implement the rule or amendment.

C. Self-Certification of Rules

Proposed Rule 806 would allow a SB SEF, as an alternative to complying with proposed Rule 805, to implement a new rule or rule amendment pursuant to self-certification.[371] This process would provide the Commission ten business days to review a self-certification filing and to stay the certification within such review period, if warranted.

Specifically, under proposed Rule 806(a), a registered SB SEFs would be required to submit the self-certification electronically at least ten business days prior to the implementation date of the new rule or rule amendment.[372] The proposed rule would require that the SB SEF publish on its Web site a notice of pending certification with the Commission and copy of the submission concurrent with the filing of a submission with the Commission.[373]

Similar to proposed Rule 805, proposed Rule 806 would require the submission to include certain specific items: (1) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated); (2) the date of intended implementation; (3) a certification by the SB SEF that the rule complies with the Exchange Act and the Commission's regulations thereunder; (4) the documentation relied on to establish the basis for compliance with the applicable provisions of the Exchange Act and the Commission's regulations thereunder, including the Core Principles; [374] (5) a brief explanation of any substantive opposing views expressed to the registered SB SEF by the Board or committee members, participants, or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed; (6) a request for confidential treatment, if appropriate; and (7) in the case of proposed amendments to the terms and conditions of a SB swap, a written statement verifying that the registered SB SEF has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading the product.[375] The proposed Rule would also require the SB SEF to provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the SB SEF's compliance with any of the requirements of the Exchange Act or the Commission's rules or regulations thereunder.[376] The proposed items of information are similar to those required by proposed Rule 805(a) as well as those in CFTC Rule 40.6.[377] The Commission preliminarily believes that inclusion of the items of information set forth in proposed Rule 806(a) would assist the Commission in considering whether a SB SEF's implementation of a new rule, rule amendment, or modification to the terms and conditions of a SB swap pursuant to self-certification is appropriate and consistent with the Exchange Act and the rules and requirements thereunder.

Under paragraph (b) of proposed Rule 806, the Commission would have 10 business days to review the submission and the self-certification would become effective at the end of the 10 business-day period, unless the Commission notifies the registered entity, during such 10 business-day period, that it intends to issue a stay of the certification.[378] Proposed Rule 806(c)(1) would provide that the Commission would be able to stay the certification of a new rule or rule amendment by issuing a notification to the SB SEF informing it that the Commission is staying the certification and stating the grounds for doing so.[379] The proposed rule also would provide that the certification of a rule could be stayed by the Commission on the grounds that the new rule or rule amendment presents novel or complex issues, is accompanied by an inadequate explanation, or is potentially inconsistent with the Exchange Act or the Commission's regulations thereunder. Once the Commission issues a notification of stay to the registered entity, the Commission would have 90 days to conduct a review. A stay of a rule certification may be appropriate, for example, where a registered entity certifies a rule that raises unique issues not previously reviewed by Commission staff. In addition, the Commission believes that new rules or rule amendments may raise a number of complex issues if they appear to have a material impact on other securities and financial markets. Thus, such rules are more likely to be

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[368] *See* proposed Rule 805(f)(2). *See infra* Section XXIII for a discussion of the certification process.

[369] *See* proposed Rule 805(g).

[370] *See* 17 CFR 40.5 and 40.6. *See also* Public Law 111–203, § 745 (amending Section 5c of the Commodity Exchange Act, 7 U.S.C. 7a–2). *See also* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.5 and 40.6).

[371] *See* proposed Rule 806.

[372] *See* proposed Rule 806(a)(1) and proposed Rule 806(a)(3). Proposed Rule 806(a)(3) would provide an exception to the 10 day requirement for new rules or rule amendments that the SB SEF seeks to implement in the exercise of its emergency authority pursuant to Rule 816, requiring instead that the SB SEF file such emergency rule or rule amendment with the Commission prior to the implementation of such rule or rule amendment, or, if not practicable, within twenty-four hours after implementation of such emergency rule or rule amendment.

[373] *See* proposed Rule 806(a)(2). The proposed Rule would require the SB SEF to provide such information in its submission to the Commission, but would permit the SB SEF to redact information that it seeks to keep confidential from the documents that it publishes on its Web site. If, however, a determination is made pursuant to the Freedom of Information Act that such information may not be kept confidential, the proposed rule would require the SB SEF to republish its filing on its Web site including such information.

[374] In the case of proposed changes to the terms and conditions of a SB swap, this provision would require, without limitation, inclusion of documentation relied on to establish the basis for compliance with Section 3D(d)(3) of the Exchange Act and proposed Rule 812 thereunder, which would require a SB SEF's swap review committee to have determined, after taking into account all of the terms and conditions of the SB swap and the markets for the SB swap and any underlying securities, that a SB swap proposed to be traded is not readily susceptible to manipulation. *See* proposed Rule 812.

[375] *See* proposed Rule 806(a)(5).

[376] *See* proposed Rule 806(a)(6).

[377] *See* proposed Rule 805(a) and 17 CFR 40.6. *See also* Public Law 111–203, § 745 (amending Section 5c of the Commodity Exchange Act, 7 U.S.C. 7a–2).

[378] *See* proposed Rule 806(b).

[379] *See* proposed Rule 806(c)(1).

subject to an extended review period to allow the Commission to adequately identify and address complex regulatory issues.

Proposed Rule 806(c)(2) would require the Commission to provide a 30-day public comment period within the 90-day period that the stay is in effect and to publish a notice of the 30-day comment period on the Commission's Web site.[380] Unless the Commission notifies the SB SEF that it objects to the certification within the 90-day period on the grounds that the proposed rule is inconsistent with the Exchange Act or the rules or regulations thereunder, the rule would become effective, pursuant to certification, upon the expiration of the 90-day review period.[381] If the Commission decides to lift the stay prior to the expiration of the 90-day review period, the Commission would notify the SB SEF of its action and the rule would become certified at such time.

Finally, proposed Rule 806(d) would permit SB SEFs to implement certain new rules or rule amendments on the following business day without certification to the Commission.[382] Pursuant to proposed Rule 806(d)(1), the rules permitted to be implemented pursuant to this summary process would be limited to rules regarding corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product.[383] Proposed Rule 806(d)(2) would require SB SEFs to provide to the Commission electronically, in a format to be specified by the Commission, at least weekly, a summary notice of all rule amendments made effective thereunder.[384] Such notice would not be required for weeks during which no such actions have been taken. Proposed Rule 806(e) would allow a SB SEF to implement certain other new rules or rule amendments without certification or notice to the Commission, provided that the SB SEF maintains documentation regarding all changes to rules and posts all such rule changes on its Web site.[385] These rules and rule amendments would be those that govern: (1) The organization and administrative procedures of a SB SEF governing bodies such as a Board, officers, and committees, but not any of the following: Voting requirements; Board or committee composition requirements or procedures; decision making procedures; use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest; or (2) the routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not any of the following: Guaranty; reserves; or similar funds; declaration of holidays; and changes to facilities housing the market.

The Commission notes that the certification process in proposed Rule 806 does not call for any final action by the Commission. In cases where a SB SEF seeks final agency action, a SB SEF could choose to file a proposed rule or rule amendment under proposed Rule 805.

The Commission intends to allow registered SB SEFs to submit filings under proposed Rules 805 and 806 electronically through a portal similar to the electronic rule filing system used for proposed rule changes by national securities exchanges and national securities associations.[386]

The Commission notes that the process under proposed Rules 805 and 806 closely parallel the CFTC's Rules 40.5 and 40.6.[387] The Commission preliminarily believes that allowing SB SEFs to file new rules and rule amendments in this manner would simplify the filing process and also provide the Commission with prompt access for review. The Commission intends to propose forms for these electronic filings as part of a separate rulemaking.

D. Request for Comment

The Commission generally requests comments on all aspects of the proposed rules relating to the proposed rule filing process. Are the Commission's proposed rules for the filing process for new rules and rule amendments appropriate and sufficiently clear? If not, why not and what would be better alternatives? Is it preferable to have a rule filing process for SB SEFs that closely aligns to the process for SEFs under the CFTC's rules as proposed? By doing this, would the proposed rules achieve the goal of streamlining and simplifying the effort to have rules implemented for entities that are both SB SEFs and SEFs? If not, what other alternatives should the Commission consider? What other burdens should the Commission take account of that joint SB SEF/SEF entities would face under the proposed rules? Is the voluntary prior approval process in proposed Rule 805 a useful option for SB SEFs? If not, what would be a better alternative?

Does the automatic effectiveness for a rule or rule amendment submitted under proposed Rule 806, once the review period has expired and in the absence of non-approval, provide sufficient legal clarity and certainty about the change? Or, would an approval order by the Commission be more instructive or helpful? Are the time periods for review, and extensions for review, in proposed Rule 805 appropriate? If so, what would be more appropriate? Should the submissions for prior approval be published by the Commission for public comment? Why or why not?

Is the provision of a notice of non-approval to the SB SEF, as described under proposed Rule 805(e), a sufficient means of informing the SB SEF of the basis for non-approval? Would more information or another form of notice be more appropriate? If so, please explain. Should such notice of non-approval be published on the Commission's Web site or otherwise be made publicly available? Would the proposed self-certification process in proposed Rule 806 be a useful alternative to the prior approval process for rule changes? Why or why not?

Are the proposed grounds for staying a certification under proposed Rule 806(c) appropriate? If not, why not? Are there other grounds that would also be appropriate for staying a certification? Under proposed Rule 806 (for self-certification), would the 10 business-day review period and, if a stay is put in place, the 90-day review period be appropriate timeframes for Commission review and consideration? If not, why not and what would be a better alternative? Please provide support for any alternative suggestions.

Should the 90-day review period, subsequent to a stay of a certification, in proposed Rule 806(c) include a 30-day public comment period? Why or why not? Is the means for determining whether a rule or rule amendment has been certified or objected to provided for in proposed Rule 806(c)(3) sufficiently clear? If not, how could such determination be made more clear? Should the Commission publish notice of either the effective certification or the notice of an objection for the public on its Web site or through other means?

[380] *See* proposed Rule 806(c)(2).

[381] *See* proposed Rule 806(c)(3).

[382] *See* proposed Rule 806(d).

[383] *See* proposed Rule 806(d)(2).

[384] *See* proposed Rule 806(d)(1).

[385] *See* proposed Rule 806(e).

[386] The process for submission of rule filings would be the subject of a separate rulemaking.

[387] *See* 17 CFR 40.5 and 40.6. *See also* Public Law 111–203, § 745 (amending Section 5c of the Commodity Exchange Act, 7 U.S.C. 7a–2). *See also* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.5 and 40.6.

Are the proposed processes for providing notice, without a certification, for certain kinds of rule changes in proposed Rule 806(d) appropriate? If not, why not? Are the proposed rule changes that would be eligible for notice without certification in proposed Rule 806(d) and (e) appropriate? If not, which ones should not be eligible for these processes? Are there other kinds of rule changes that should be eligible for these processes?

Would an electronic method for submitting all rule submissions under proposed Rules 805 and 806 be an appropriate and efficient way of making such submissions? If not, why not? Would an electronic system such as the existing system for submitting rule changes by national securities exchanges and associations, Electronic Form 19b–4 Filing System, or "EFFS,"[388] be a good model for the system for SB SEF submissions under these proposed rules? If not, what would be a better model for such an electronic system?

XXIV. Filing Processes for Trading Security-Based Swaps

A. Introduction

The Commission is proposing to adopt rules requiring SB SEFs to comply with certain filing processes prior to trading SB swaps. Specifically, the Commission is proposing new Rules 807 and 808 of Regulation SB SEF, which set forth filing processes for commencement or continued trading of SB swaps on a SB SEF. The processes proposed under these rules are substantially similar to the parallel processes that the CFTC has in its existing rules, 17 CFR 40.2 and 17 CFR 40.3, as modified by the new authority the CFTC has received under Section 745 of the Dodd-Frank Act.[389]

The proposed filing processes pursuant to which a SB SEF may trade a SB swap each require that a SB SEF describe the proposed product's "terms and conditions." The Commission is not proposing a definition of "terms and conditions," but requests comment on whether it should adopt a definition of "terms and conditions" and, if so, what specifically should such a definition include.[390] Specifically, should a Commission definition of "terms and conditions" refer to the rights and obligations of the counterparties to a SB swap? Should it include such items as: (1) Notional values; (2) relevant dates, tenor, and day count conventions; (3) index; (4) relevant prices, rates or coupons; (5) currency; (6) stub, premium, or initial cash flow components along with subsequent life cycle events; (7) payment and reset frequency; (8) business calendars; (9) accrual type; (10) spread or points; and (11) description of the underlying security or securities or reference asset(s)? Should it include other items that appear in the CFTC's definition? Are there any other items that should be included? Should the ISDA Master Agreement be referenced in a definition? If so, why and how?

B. Trading SB Swaps Pursuant to Certification

Proposed Rule 807 would require every SB SEF to comply with certain submission requirements prior to trading a SB swap product if such product has not been approved under proposed Rule 808. Pursuant to proposed Rule 807 every submission must be filed electronically in a form to be determined by the Commission and be received by the Commission by the open of business on the business day preceding the day the SB swap would commence trading. In addition, every submission would be required to include: (1) A copy of the SB swap product's terms and conditions; (2) the intended date on which the SB swap may begin trading; (3) a certification by the registered SB SEF that the SB swap to be traded complies with the Exchange Act and the rules and regulations thereunder; (4) the documentation relied on to establish the basis for compliance with the Exchange Act and the rules and regulations thereunder, including the Core Principles; [391] (5) a written statement verifying that the registered SB SEF has undertaken a due diligence review of the legal conditions, including legal conditions that relate to contractual and intellectual property rights, that may materially affect the trading of the SB swap; (6) a certification that the registered SB SEF posted on its Web site a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission; and (7) a request for confidential treatment, if appropriate.

Pursuant to proposed Rule 807(b), upon request of any representative of the Commission, a SB SEF would be required to provide any additional evidence, information or data demonstrating that the SB swap product meets, initially or on a continuing basis, all of the requirements of the Exchange Act and its rules.

Proposed Rule 807(c) would provide that the Commission would be able to stay the certification of a SB swap by issuing a notification to the SB SEF informing it that the Commission is staying the certification and stating the grounds for doing so.[392] The proposed rule also would provide that the certification could be stayed by the Commission on the grounds that the SB swap presents novel or complex issues, is accompanied by an inadequate explanation, or is potentially inconsistent with the Exchange Act or the Commission's regulations thereunder. Once the Commission issues a notification of stay to the registered entity, the Commission would have 90 days to conduct a review. A stay of a certification may be appropriate, for example, where a registered entity certifies a SB swap that raises unique issues not previously reviewed by Commission staff.

Proposed Rule 807(c) would require the Commission to provide a 30-day public comment period within the 90-day period that the stay is in effect and to publish a notice of the 30-day comment period on the Commission's Web site.[393] Unless the Commission notifies the SB SEF that it objects to the certification within the 90-day period on the grounds that the proposed SB swap is inconsistent with the Exchange Act or the rules or regulations thereunder, the SB swap would become effective, pursuant to certification, upon the expiration of the 90-day review period.[394] If the Commission decides to lift the stay prior to the expiration of the 90-day review period, the Commission would notify the SB SEF of its action

[388] *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004) (File No. S7–18–04).

[389] *See* Public Law 111–203, § 745 (amending Section 5c of the Commodity Exchange Act, 7 U.S.C. 7a–2). *See also* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.2 and 40.3).

[390] The Commission notes that the CFTC, in 17 CFR 40.1, defines "terms and conditions" as referring to a description of the security underlying a swap, specification of cash settlement, and the rights and obligations of the counterparties to the swap. The CFTC's definition also notes that whenever possible, all proposed swap terms and conditions should conform to industry standards or those terms and conditions adopted by comparable contracts. Further, the CFTC's definition sets forth a list of items covered by the phrase "terms and conditions."

[391] As discussed in note 374 *supra,* this provision would require, without limitation, inclusion of documentation relied on to establish the basis for compliance with Section 3D(d)(3) of the Exchange Act and proposed Rule 812 thereunder, which would require a SB SEF's swap review committee to have determined, after taking into account all of the terms and conditions of the SB swap and the markets for the SB swap and any underlying securities, that a SB swap proposed to be traded is not readily susceptible to manipulation.

[392] *See* proposed Rule 807(c)(1).

[393] *See* proposed Rule 807(c)(2).

[394] *See* proposed Rule 807(c).

and the SB swap would become certified at such time.[395]

The Commission preliminarily believes that proposed Rule 807, which closely parallels CFTC proposed new Rule 40.2, provides a reasonable process pursuant to which a SB SEF may trade SB swaps through a certification process. Any dually registered SB SEF would be following very similar procedures for certification of swaps under CFTC proposed new Rule 40.2. The proposed rule would give the Commission notice of any new SB swaps for which a SB SEF would permit trading and would allow the Commission to stay a proposed SB swap's certification in certain circumstances. In addition, because the proposed rule closely parallels the CFTC's proposed rule, it would provide for greater harmonization of the regulatory process applied to SEFs and SB SEFs.

The Commission also preliminarily believes that it is appropriate to include in any submissions under proposed Rule 807 documentation demonstrating that the product is in compliance with the SB SEF Core Principles—in particular, core principles that apply specifically to products, such as Core Principle 3 concerning manipulation. The Commission preliminarily believes that it is appropriate to require a SB SEF to document the basis for a determination that a SB swap is not readily susceptible to manipulation and notes that the self-certification in proposed Rule 807 is drawn from analogous processes that the CFTC currently has in place with respect to new financial futures products proposed to be traded on a designated contract market.[396] The Commission further notes that CFTC regulations require that prior to trading a new product, a designated contract market must demonstrate that the terms and conditions of a proposed contract "will not be conducive to price manipulation or distortion."[397] The Commission also preliminarily believes that SB SEFs should be conducting due diligence before listing a new SB swap product. In evaluating any certification, information on such due diligence would be essential to the Commission.

The Commission preliminarily believes that SB SEFs would make use of the certification process in the same way that registered entities have been making use of the parallel process under the CFTC's existing rules. The Commission understands from CFTC staff that entities generally use the CFTC's current certification process if they reasonably believe that the new product does not raise any novel issues or questions. However, the Commission notes that the proposed certification process does not include any final action of the Commission. In cases where a SB SEF desired final agency action, Proposed Rule 808 would be available.[398]

The Commission requests comment on all aspects of Proposed Rule 807. Is the proposed rule text clear? Should a SB SEF be required to include in its certification disclosure of whether a proposed product is or is not subject to mandatory clearing? Should a SB SEF be required to include additional information when certifying a new SB swap product? If so, what additional information should be included? Should the proposed rule enumerate what additional evidence, information or data would need to be provided pursuant to proposed paragraph (a) of Rule 807, or what the time frame for such a request should be? Is the proposed stay of certification process clear? Should the Commission consider adopting another stay procedure? If so, what should that process be?

C. Trading SB Swaps Pursuant to Commission Review and Approval

Proposed Rule 808 would permit a SB SEF to request that the Commission approve a SB swap prior to permitting trading of the SB swap, or if a SB swap product was initially submitted under Rule 807, subsequent to commencement of trading of the SB swap. Under proposed Rule 808, a submission requesting approval would be required to be submitted electronically in a form to be determined by the Commission and include: (1) A copy of the SB swap product's terms and conditions; (2) the documentation relied on to establish the basis for compliance with the Exchange Act and rules and regulations thereunder, including the Core Principles;[399] (3) a written statement verifying that the registered SB SEF has undertaken a due diligence review of the legal conditions, including legal conditions that relate to contractual and intellectual property rights, that may materially affect the trading of the SB swap; (4) if appropriate, a request for confidential treatment as permitted pursuant to the applicable provisions of FOIA[400] and applicable Commission regulations;[401] and (5) a certification that the registered SB SEF has published on its Web site a notice of pending request for approval with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission.

In addition, under proposed Rule 808(b), if requested by a representative of the Commission, a SB SEF would be required to provide additional evidence, information or data that demonstrates that the SB swap product meets, initially and on a continuing basis, all of the requirements of the Exchange Act and any applicable rules and regulations. Under proposed Rule 808(c) the Commission would approve a new SB swap product unless the terms and conditions of such product were inconsistent with the Exchange Act or rules and regulations thereunder.[402]

Under proposed Rule 808(d), all products submitted for Commission approval under the proposed section would be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under proposed Rule 808(e), provided that: (1) The submission complied with the requirements of proposed Rule 808(a); and (2) the SB SEF making the

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[395] The stay provision in proposed Rule 807(c) is more similar to the stay provision in proposed Rule 806 and proposed CFTC Rule 40.6 than it is to the stay provision in proposed CFTC Rule 40.2. Proposed CFTC Rule 40.2 would permit the CFTC to stay a certification of a SB swap during the pendency of a CFTC proceeding for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Commodity Exchange Act. The Commission notes that the Exchange Act does not provide for procedures analogous to those in proposed CFTC Rule 40.2, and thus is proposing it to align proposed Rule 807 with proposed CFTC Rule 40.2.

[396] *See* 17 CFR 40.2, 40.3. *See also* 17 CFR 40, Appendix A to Part 40—Guideline No. 1.

[397] *Id.* The Commission understands that the CFTC expect to propose a similar requirement for SEFs.

[398] *See infra* Section XXIV, discussing trading of SB swaps pursuant to Commission review and approval.

[399] *See supra* note 374.

[400] 5 U.S.C. 552.

[401] 17 CFR 200.83.

[402] The standard for approval in proposed Rule 808 would differ from the standard for approval in proposed CFTC Rule 40.3. Proposed CFTC Rule 40.3 provides that the CFTC shall approve a new swap product unless the terms and conditions of such product "violate" the Commodity Exchange Act. *See* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.2–40.5). Notably, proposed CFTC Rule 40.5 provides that the CFTC shall approve an amendment to the terms and conditions of a swap product unless the amended product would be "inconsistent" with the Commodity Exchange Act. *See id.* The Commission believes that it is preferable to have the same standard for approval in proposed Rules 805 and 808 and therefore proposes that the standard for approval in proposed Rule 808 be the same as the standard for proposed CFTC Rule 40.5. The Commission notes that the proposed standard is similar to the standard for Commission approval of a proposed rule change filed under Section 19(b)(2) of the Exchange Act. *See* 15 U.S.C. 78s(b)(2).

submission did not amend the terms and conditions of the proposed SB swap product or supplement its request for approval during that period, except in response to a request by the Commission or for correction of typographical errors, renumbering or other non-substantive revisions. In addition, under proposed Rule 808(d), any voluntary, substantive amendment by the SB SEF would be treated as a new submission.

Under proposed Rule 808(e) the Commission would be able to extend the 45-day review period for an additional 45 days, if the proposed SB swap product raised novel or complex issues that required additional time for review. In that event, the Commission would need to notify the SB SEF within the initial 45 day review period and would need to briefly describe the nature of the specific issues. Alternatively, the SB SEF could agree to any extended review period in writing.

Under proposed Rule 808(f), the Commission could notify the SB SEF at any time during its review of the submission that the Commission will not or is unable to approve the proposed SB swap product. Such notification would be required to specify the nature of the issues raised by the proposed SB swap product and the specific provisions of the Exchange Act rules and regulations involved.

Proposed Rule 808(g) would address the effect of non-approval by the Commission. Under proposed paragraph (g) notification to a SB SEF of the Commission's determination not to approve a proposed SB swap product would not prejudice the SB SEF from subsequently submitting a revised version of the proposed product for Commission approval or from submitting the product as initially proposed pursuant to a supplemented submission. However, notification to a SB SEF of the Commission's refusal to approve SB swap would be presumptive evidence that the entity would not be able to truthfully certify under Rule 807 that the same, or substantially the same, SB swap complies with the Exchange Act or the rules thereunder.

As with proposed Rule 807, proposed Rule 808 is substantially similar to the applicable CFTC proposed rule, new proposed Rule 40.3. The Commission believes that this approach would allow dually registered entities to more easily comply with applicable rules and regulations. The Commission expects that the SB SEF would include in its submission all documentation relied upon to determine that the new product complies with applicable core principles—in particular, core principles that apply specifically to products, such as Core Principle 3 concerning manipulation. The Commission preliminarily believes that it is appropriate to require a SB SEF to document the basis for a determination that a SB swap is not readily susceptible to manipulation and notes that the proposed certification in proposed Rule 808 is drawn from analogous processes that the CFTC currently has in place with respect to new financial futures products proposed to be traded on a designated contract market.[403] The Commission further notes that the CFTC regulations require that prior to trading a new product, a designated contract market must demonstrate that the terms and conditions of a proposed contract "will not be conducive to price manipulation or distortion."[404] The Commission also preliminarily believes that SB SEFs should be conducting due diligence before permitting trading of a new SB swap product. In evaluating any certification, information on such due diligence would be essential to the Commission.

As noted above in the discussion concerning self-certification of new SB swaps, the Commission preliminarily believes that SB SEFs would use the product approval process in instances where they believe novel or difficult issues are presented and they desire final agency action.

The Commission intends to allow registered SB SEFs to submit filings under proposed Rules 807 and 808 electronically through a portal similar to the electronic rule filing system used for proposed rule changes by national securities exchanges and national securities associations.[405] The Commission preliminarily believes that allowing SB SEFs to file new rules and rule amendments in this manner would simplify the filing process and also provide the Commission with prompt access for review. The Commission intends to propose forms for these electronic filings as part of a separate rulemaking.

The Commission requests comment on all aspects of proposed Rule 808. Is the process required by proposed Rule 808 clear? If not, what elements of the process need to be added to the proposed rule? Under what circumstances would a SB SEF that had already certified a new SB swap product request approval of the product pursuant to the proposed rule? Should product approval be mandatory for certain types of SB swaps, as opposed to certification? If so, what products? Please be specific. Is the proposed standard for approval of a SB swap appropriate? If not, why not?

XXV. Discussion of Exemptive Authority Pursuant to Section 36 of the Exchange Act and Compliance Matters

Pursuant to Section 36 of the Exchange Act, the Commission may grant an exemption from any provision of Section 3D of the Exchange Act, any rule or any provision of any rule under Regulation SB SEF, or any provision of the definition of "security-based swap execution facility" in Section 3(a)(77) of the Exchange Act and any Commission rules regarding such definition to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. Any such exemption could be subject to conditions and could be revoked by the Commission at any time. Generally, the Commission would consider entertaining an application for an exemption where the exemption is necessary or appropriate in the public interest and consistent with the protection of investors. The Commission in its sole discretion would determine whether to grant or deny a request for an exemption. In addition, the Commission could revoke an exemption at any time, including if a SB SEF could no longer demonstrate that such exemption is necessary or appropriate in the public interest, or is consistent with the protection of investors.

The Commission requests comment on all aspects of the exemptive authority. Would such exemptive authority be useful to facilitate the purposes of the Dodd-Frank Act? If so, in what circumstances should the Commission grant exemptions? Should exemptions only be granted in limited circumstances? Should the Commission consider granting exemptions from all rules under Regulation SB SEF or are exemptions only warranted for specific rules or specific entities? For example, should exemptions only be available with respect to certain Core Principles? Should the Commission consider granting exemptions from all provisions of Section 3(a)(77) of the Exchange Act, or should exemptions only be available with respect to certain aspects of the definition of "security-based swap execution facility?" What specific factors should the Commission consider in determining whether to grant an exemption? Are there cases where exemptions may not be appropriate and should not be considered?

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[403] *See* 17 CFR 40.2, 40.3. *See also* 17 CFR 40, Appendix A to Part 40—Guideline No. 1.

[404] *Id.*

[405] The process for submission of rule filings will be the subject of a separate rulemaking.

The Commission acknowledges that it may take a period of time, as well as require the expenditure of resources, for an SB SEF to implement a number of the requirements set forth in proposed Regulation SB SEF, should those requirements be part of any final rules the Commission may adopt. A potential SB SEF would not be able to determine the final rules governing SB SEFs with which it would need to comply until the Commission adopts those rules. While the Commission is committed to implementing Congress's directive to require SB SEFs to register with the Commission and comply with the Core Principles, the Commission understands that some or all potential SB SEFs may need a period of time in which to acquire or configure the necessary systems, engage and train the necessary staff, and develop and implement the necessary policies and procedures in order to comply with any final rules that the Commission may adopt.

The Commission requests comment as to whether it should provide a SB SEF a certain amount of time to comply with the proposed requirements of Regulation SB SEF applicable to a registered SB SEF once the SB SEF has become registered, and, if so, which provisions, why, and how much time should be provided. For example, proposed Rule 820 relates to the fair representation of participants on the SB SEF's Board. Should the Commission provide for a delayed compliance date for this provision to allow the SB SEF sufficient time to establish the requisite procedures relating to the election of fair representation candidates, including through a petition process, and to align compliance with the date of its election of other directors? [406] Should the Commission consider a delayed compliance date for the CCO's annual report required by proposed Rule 823, for example, if the SB SEF's fiscal year ended shortly after the SB SEF's registration application was approved by the Commission? Are there other proposed rules or provisions of such rules for which a SB SEF should be provided more time to comply after becoming registered? If so, which ones and under what conditions should the Commission permit a delayed compliance date? For example, would it be appropriate to delay the date for an SB SEF to comply with the automated surveillance requirements of proposed Rule 813, as long as the SB SEF had other means to satisfy its surveillance obligations? If so, how long of a delay would be appropriate?

The Commission notes that, under the proposed rules, it would have the authority to temporarily register a SB SEF and, under proposed Regulation SB SEF, a temporarily registered SB SEF would need to comply with Regulation SB SEF, including the rules implementing the Core Principles. Should a phased-in compliance approach apply only with respect to those SB SEFs that are temporarily registered with the Commission? Should phased-in compliance be built into the temporary registration process? Alternatively, should the Commission consider using its Section 36 exemptive authority to exempt SB SEFs from certain of the requirements of Regulation SB SEF on a case-by-case basis? If commenters favor a phased-in compliance approach for certain proposed rules, they should provide specific recommendations, a rationale for each such recommendation, and the conditions under which any such phased-in approach should be granted.

The Commission also seeks comment on whether it is necessary or appropriate for SB SEFs that do not meet certain objective thresholds, such as a trading or volume threshold, to comply with all of the requirements of proposed Regulation SB SEF. To avoid unnecessary barriers to entry that could preclude small SB SEFs from entering this market and better facilitate competition and innovation in the SB swap markets that could be used to promote more efficient trading in organized, transparent and regulated venues, would it be necessary or appropriate to except an SB SEF from certain requirements of proposed Regulation SB SEF under certain conditions, *e.g.,* if the SB SEF does not reach a specified volume or liquidity threshold with respect to the trading of SB swaps. For example, should a SB SEF be excepted from provisions of proposed Rule 816 regarding emergency authority and proposed Rule 822 regarding systems safeguards if the SB SEF does not reach a specified volume or liquidity threshold with respect to the trading of SB swaps? Are there circumstances when it would be burdensome for a SB SEF to undertake electronic surveillance of SB swaps, *e.g.,* if the SB SEF had a low threshold of trading in SB swaps? In that case, would it be appropriate to except the SB SEF from the automated surveillance requirements of proposed Rule 813, as long as the SB SEF had other means to satisfy its surveillance obligations? How should any low volume or other liquidity-based exception be measured, particularly at the outset of trading of SB swaps on registered SB SEFs? Are there other conditions that should be considered in any Commission determination that a SB SEF need not comply with certain provisions of SB SEF and, if so, what are those conditions? In lieu of granting exceptions from certain proposed rules under certain conditions on an omnibus basis, should the Commission instead consider granting exemptions from the provisions of Regulation SB SEF on a case-by-case basis?

XXVI. General Request for Comments

The Commission seeks comment on the proposed interpretation of the definition of SB SEF; creation of a registration framework for SB SEFs; and establishment of rules with respect to the Dodd-Frank Act requirement that a SB SEF must comply with the enumerated fourteen Core Principles and enforce compliance with those principles. The Commission particularly requests comment on possible alternatives to the proposals in this release. The Commission also seeks comments on the general impact the proposals would have on the market for SB swaps.

The Commission invites commenters to address whether the proposed rules are appropriately tailored to achieve the goal of transparency, competition, and efficiency in the SB swap market, including with respect to the administration of the SB SEFs' regulatory activities. The Commission also requests comment on the necessity and appropriateness of mandating the proposed requirements set forth in this release. The Commission seeks comment on the proposals as a whole, including their interaction with the other provisions of the Dodd-Frank Act. The Commission further seeks comment on whether the proposals would help achieve the broader goals of increasing transparency and accountability in the SB swap market.

Commenters should, where possible, provide the Commission with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations that they believe should apply; the reasons for their suggested approaches; and their analysis regarding why their suggested approaches would satisfy the statutory mandate contained in Section 763 of the Dodd-Frank Act.

In considering the proposal, the Commission requests that commenters consider not only each individual proposal contained in proposed Regulation SB SEF but also the totality

[406] *See* Regulation MC Proposing Release, *supra* note 82.

of the Commission's proposals relating to SB SEFs, including the proposed interpretation of the definition of SB SEF, the proposed rules relating to SB SEFs, and the proposed registration requirements for SB SEFs. Do the proposed interpretation of the definition of SB SEF and proposed Regulation SB SEF in their entirety provide an efficient and effective way to implement the requirements of the Dodd-Frank Act relating to SB SEFs? Are the proposed interpretation of the definition of SB SEF and proposed Regulation SB SEF in their entirety properly tailored so that a SB SEF can meet the proposed regulatory requirements and yet be an economically viable business? Are there aspects of the Commission's proposals relating to the regulation of SB SEFs that, when viewed as a whole, are too burdensome, especially in light of the nascent stage of the SB swap market? If so, what are those features and are there ways in which they can be revised? With respect to the proposed rules to implement the Core Principles, commenters are invited to consider, in addition to the costs of each proposed rule, the totality of the costs of all of the proposed rules taken as a whole. Are there any instances in which aspects of the Commission's proposals should not apply? For example, should a system or platform that otherwise would meet the proposed interpretation of the definition of SB SEF, but that does a minimal business in the SB swap market, be exempt from all or some of the requirements of Regulation SB SEF either temporarily or permanently? In general, are there additional steps that the Commission could take that would implement the requirements of the Dodd-Frank Act that apply to SB SEFs and at the same time allow the SB swap market to continue to develop?

Title VII of the Dodd-Frank Act requires that the SEC consult and coordinate to the extent possible with the CFTC for the purposes of assuring regulatory consistency and comparability, to the extent possible,[407] and states that in adopting rules, the CFTC and SEC shall treat functionally or economically similar products or entities in a similar manner.[408]

The CFTC is adopting rules relating to SEFs as required under Section 733 of the Dodd-Frank Act. Understanding that the Commission and the CFTC regulate different products and markets, and as such, appropriately may be proposing alternative regulatory requirements, the Commission requests comments on the impact of any differences between the Commission and CFTC approaches to the regulation of SB SEFs and SEFs. Specifically, do the regulatory approaches under the Commission's proposed rulemaking pursuant to Section 763 of the Dodd-Frank Act and the CFTC's proposed rulemaking pursuant to Section 733 of the Dodd-Frank Act result in duplicative or inconsistent efforts on the part of market participants subject to both regulatory regimes or result in gaps between those regimes? If so, in what ways do commenters believe that such duplication, inconsistencies, or gaps should be minimized? Do commenters believe the approaches proposed by the Commission and the CFTC to regulate SB SEFs and SEFs are comparable? If not, why? Do commenters believe there are approaches that would make the regulation of these facilities more comparable? If so, what are those approaches? Do commenters believe that it would be appropriate for the Commission to adopt an approach proposed by the CFTC that differs from the Commission's proposal? If so, which one? The Commission requests commenters to provide data, to the extent possible, supporting any such suggested approaches.

The Commission seeks comment on whether its proposed rules, either individually or collectively, could permit regulatory arbitrage or have the effect of driving SB swaps and other derivatives transactions to financial centers in other jurisdictions. In this regard, how do the proposed rules compare with comparable existing or proposed rules of other jurisdictions? If the Commission were to adopt the proposed rules, would market participants, end users, and others find it less costly to transact their SB swaps and other derivatives transactions in other jurisdictions? If so, please provide specific details on those jurisdictions that could be regarded as having preferential regulation for trading SB swaps and please identify all the specific rules and circumstances that could lead to such preferences. The Commission also seeks comment on specific actions that it could take to harmonize its proposed rules with those of other jurisdictions consistent with the mandates and goals of the Dodd-Frank Act.

XXVII. Paperwork Reduction Act

Certain provisions of the proposed rules contain new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[409] The Commission is submitting the proposed collection of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The title of the new collection of information is Regulation SB SEF. As proposed, Regulation SB SEF would implement the provisions of Title VII of the Dodd-Frank Act relating to the registration and regulation of SB SEFs. Proposed Regulation SB SEF would include rules regarding the registration of a prospective SB SEF on Form SB SEF, rule-writing, reporting, recordkeeping, timely publication of trading information, the filing of new or amended rules or new products with the Commission, reports of the SB SEF's CCO, surveillance systems to capture certain required information and access to SB SEFs by ECPs.[410] 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.

A. Summary of Collection of Information

1. Registration Requirements for SB SEFs and Form SB SEF

A number of the proposed rules under Regulation SB SEF relate to registration with the Commission by an applicant that seeks status as a registered SB SEF. Proposed Rules 801, 802, 803, 804, and proposed Form SB SEF each would contain requirements relating to registration with the Commission by an applicant seeking to register as a SB SEF that would result in a paperwork burden.

Proposed Rule 801(a) would require an applicant to apply for registration with the Commission as a SB SEF by filing electronically, in a tagged data format, a registration application on Form SB SEF in accordance with the instructions contained therein. Under proposed Rule 801(d), an applicant would be required to designate and authorize on Form SB SEF an agent in the United States to accept notice or service of process, pleadings, or other documents in any suit, action or proceedings brought against it to enforce the Federal securities laws or the rules or regulations thereunder. Under

[407] *See* Public Law 111–203, § 712(a)(2).

[408] *See* Public Law 111–203, § 712(a)(7).

[409] 44 U.S.C. 3501 *et seq.*

[410] As proposed, Regulation SB SEF would contain 24 rules that are designated Rule 800 through Rule 823 inclusive; not all of these proposed rules would include a collection of information. The proposed form for registering as a SB SEF under Regulation SB SEF is Form SB SEF. This collection of information includes any collections of information required by proposed Form SB SEF. Unless identified otherwise, all proposed rules referred to in this section would be contained in Regulation SB SEF.

proposed Rule 801(e), an applicant that is controlled by any other person [411] would be required to certify on Form SB SEF and provide an opinion of counsel that any person that controls such SB SEF will consent to and can, as a matter of law, provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, and submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF. Under proposed Rule 801(f), a non-resident person applying for registration would be required to certify on Form SB SEF and provide an opinion of counsel that it can, as a matter of law, provide the Commission with prompt access to its books and records and submit to onsite inspection and examination by representatives of the Commission. In addition, proposed Rule 814(b)(4) would require the applicant to certify at the time of registration on Form SB SEF that the SB SEF has the capacity to fulfill its obligations under international information sharing agreements to which it is a party as of the date of such certification.

Proposed Rule 802 relates to amendments to Form SB SEF. Proposed Rule 802(a) would require a SB SEF to file an amendment to Form SB SEF promptly, but in no case later than 5 business days, after the discovery that any information filed on Form SB SEF, any statement therein, or any exhibit or amendment thereto, was inaccurate when filed. Proposed Rule 802(b) would require a SB SEF to file an amendment, on Form SB SEF, within 5 business days after any action is taken that renders inaccurate, or causes to be incomplete, information filed on the Execution Page of the Form SB SEF or as part of Exhibits C, E, G or N,[412] or any amendments thereto. Proposed Rule 802(c) would require a SB SEF that is controlled by any other person to file an amendment to Exhibit P on Form SB SEF within 5 business days after any changes in the legal or regulatory framework of any person that controls the SB SEF that would impact the ability of or the manner in which any such person consents to or provides the Commission prompt access to its books and records, to the extent such books and records relate to the activities of the SB SEF, or impacts the Commission's ability to inspect and examine any such person with respect to the activities of the SB SEF. Proposed Rule 802(d) would require a non-resident SB SEF to file an amendment to Exhibit P on Form SB SEF within 5 business days after any changes in the legal or regulatory framework that would impact the SB SEF's ability to or the manner in which it provides the Commission with prompt access to its books and records or impacts the Commission's ability to inspect and examine the SB SEF. Proposed Rule 802(f) would require a SB SEF to file an annual update to Form SB SEF within 60 days of the end of its fiscal year.

Proposed Rule 803(a) would require a registered SB SEF to provide to the Commission material relating to the trading of SB swaps (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to SB SEF participants. If the information required to be filed pursuant to proposed Rule 803(a) is available continuously on an Internet Web site controlled by a SB SEF, proposed Rule 803(b) would allow the SB SEF to indicate the location of the Web site where the information may be found and certify that the information available at such Web site is accurate as of its date in lieu of filing such information with the Commission pursuant to proposed Rule 803(a).

Proposed Rule 804(a) would allow a SB SEF to withdraw from registration by filing with the Commission a written notice of withdrawal and an amended Form SB SEF to update any inaccurate information.

Proposed Rules 811(b)(4) and 811(h)(2) would require a SB SEF to report information regarding grants, denials and limitations of access on Form SB SEF and to disclose all disciplinary actions taken annually on its annual update to From SEF, respectively.

2. Rule-Writing Requirements for SB SEFs

A number of the proposed rules under Regulation SB SEF would require a SB SEF to establish rules, policies and procedures with respect to various matters. These are proposed Rules 809(c), 810(b), 811(a)(2), 811(a)(3), 811(b)(1), 811(b)(5), 811(c), 811(d), 811(f), 811(g), 811(i), 813(a), 813(c), 813(d), 814(a), 815(a), 816(a), 816(b), 818(d), 820(a), 820(c) and 822(a)(1).

Proposed Rule 809(c) would require a SB SEF to establish rules setting forth requirements for an eligible person to become a participant in the SB SEF. Such rules would require a participant, at a minimum, to: (1) Be a member of, or have an arrangement with a member of, a registered clearing agency to clear trades in the SB swaps that are subject to mandatory clearing and entered into by the participant on the SB SEF; (2) (i) meet the minimum financial responsibility and recordkeeping and reporting requirements imposed by the Commission by virtue of its registration as a SB swap dealer, major SB swap participant, or broker; or (ii) in the case of an eligible contract participant, meet the recordkeeping and reporting requirements that the SB SEF would establish pursuant to proposed Rule 813; (3) agree to comply with the rules, polices, and procedures of the SB SEF; and (4) consent to the disciplinary procedures of the SB SEF for violations of the SB SEF's rules.

Proposed Rule 810(b) would require a SB SEF to establish: (1) Rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and any other users of its system; (2) rules and systems that are not designed to permit unfair discrimination among participants and any other users of the SB SEF's system; (3) rules that promote just and equitable principles of trade; and (4) rules to provide, in general, a fair procedure for disciplining participants for violations of the rules of the SB SEF.

Proposed Rule 811(a)(2) would require a SB SEF to establish and enforce trading, trade processing, and participation rules that would deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. Proposed Rule 811(a)(3) would require a SB SEF to establish rules governing the operation of the SB SEF, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the SB SEF, including block trades. Proposed Rule 811(b)(1) would require a SB SEF to establish fair, objective and not unreasonably discriminatory standards for granting impartial access to trading on the SB SEF. Proposed Rule 811(b)(5) would require a SB SEF to establish a fair process for the review of any prohibition or limitation on access with respect to a participant or any refusal to grant access with respect to an applicant. Proposed Rule 811(c) would require a SB SEF to establish rules concerning the terms and conditions of the SB swaps traded on the SB SEF and to have rules stipulating the method by which representation on the swap

[411] *See supra* note 319 and accompanying text regarding the definition of "control."

[412] These Exhibits pertain to the list of officers, directors and committees of the SB SEF (Exhibit C); ownership of the SB SEF (Exhibit E); certain material operating agreements (Exhibit G); and criteria for determining what securities may be traded (Exhibit N).

review committee of the SB SEF shall be chosen by the Board.

Proposed Rule 811(d) would require a SB SEF to establish rules governing the procedures for trading on the SB SEF including, but not limited to: (1) Doing business on the SB SEF; (2) the types of trading interest [413] that would be available on the SB SEF; (3) the manner in which trading interest would be handled on the SB SEF and a requirement for fair treatment of all trading interest; (4) the manner in which price transparency for participants entering trading interest into the system would be promoted; (5) the manner in which trading interest and transaction data would be disseminated, whether to the SB SEF's participants or otherwise, and whether for a fee or otherwise; (6) prohibited trading practices; (7) the prevention of the entry of orders, requests for quotations, responses, quotations, or other trading interest that might result in a trade that is clearly erroneous with respect to the terms of the trade, a fair and non-discriminatory manner of handling any trade that is clearly erroneous, and resolution of any disputes concerning a clearly erroneous trade; (8) trading halts in any SB swap, which rules would be required to include procedures for halting trading in a SB swap when trading has been halted or suspended in the underlying security or securities pursuant to the rules or an order of a regulatory authority with authority over the underlying security or securities; (9) the manner in which block trades would be handled, if different from the handling of non-block trades; and (10) any other rules concerning trading on the SB SEF.

Proposed Rule 811(f) would require a SB SEF to establish rules concerning the reporting of trades executed on the SB SEF to a clearing agency if the transaction is subject to clearing and the procedures for the processing of transactions in SB swaps that occur on or through the SB SEF including, but not limited to, procedures to resolve any disputes concerning the execution of a trade.

Proposed Rule 811(g) would require a SB SEF to establish rules and procedures concerning the disciplining of participants including, but not limited to, rules authorizing its staff to recommend and take disciplinary action for violations of the rules of the SB SEF; specifying the sanctions that may be imposed upon participants for violations of the rules of the SB SEF such that each sanction is commensurate with the corresponding violation; and establishing fair and non-arbitrary procedures for any disciplinary process and appeal thereof.

Proposed Rule 811(i) would require a SB SEF to establish rules and procedures to assure that information to be used to determine whether rule violations have occurred is captured and retained in a timely manner.

Proposed Rule 813(a) would require a SB SEF to establish and enforce rules or terms and conditions defining, or specifications detailing trading procedures to be used in entering and executing orders traded on or through the facilities of the SB SEF and procedures for trade processing of SB swaps on or through the facilities of the SB SEF. Proposed Rule 813(c) would require a SB SEF to establish rules requiring any participant that enters any order or trading interest or executes any transaction on the SB SEF to maintain books and records of any such trading interest or transaction and of any position in any SB swap that is the result of any such trading interest or transaction and to provide prompt access to such books and records to the SB SEF and to the Commission.

Proposed Rule 813(d) would require a SB SEF to establish and maintain procedures to investigate possible rule violations, to prepare reports concerning the findings and recommendations of investigations, and to take corrective action, as necessary.

Proposed Rule 814(a) would require a SB SEF to establish and enforce rules requiring its participants [414] to furnish to the SB SEF, upon request, and in the form and manner prescribed by the SB SEF, any information necessary to permit the SB SEF to perform its responsibilities, including, without limitation, surveillance, investigations, examinations and discipline of participants; such information may include, without limitation, financial information, books, accounts, records, files, memoranda, correspondence, and any other information pertaining to trading interest entered and transactions executed on or through the SB SEF, and to cooperate with and allow access by the SB SEF and representatives of the Commission.

Proposed Rule 815(a) would require a SB SEF to establish and enforce rules and procedures for ensuring the financial integrity of SB swaps entered on or through the facilities of such SB SEF, including the clearance and settlement of SB swaps pursuant to new section 3C(a)(1) of the Exchange Act.

Proposed Rule 816(a) would require a SB SEF to establish rules and procedures to provide for the exercise of emergency authority in consultation or cooperation with the Commission as necessary or appropriate. Proposed Rule 816(b) would require a SB SEF to establish rules and procedures that would specify: (1) The person or persons authorized by the SB SEF to declare an emergency; (2) how the SB SEF would notify the Commission of its decision to exercise its emergency authority; (3) how the SB SEF would notify the public of its decision to exercise its emergency authority; (4) the processes for decision making by the SB SEF personnel with respect to the exercise of emergency authority, including alternate lines of communication and guidelines to avoid conflicts of interest in the exercise of such authority; and (5) the processes for determining that an emergency no longer exists and notifying the Commission and the public of such decision.

Proposed Rule 818(d) would require a SB SEF to establish, maintain, and enforce written policies and procedures to verify the accuracy of the transaction data that it collects and reports.

Proposed Rule 820(a) would require the rules of a SB SEF to assure fair representation of participants in the selection of the SB SEF's Board. Proposed Rule 820(c) would require the rules of a SB SEF to include a fair process for participants to nominate an alternative candidate or candidates to the Board by petition.

Proposed Rule 822(a)(1) would require a SB SEF, with respect to those systems that support or are integrally related to the performance of its activities, to establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security. These policies and procedures would, at a minimum, require the security-based swap execution facility to: (1) Establish reasonable current and future capacity estimates, including quantifying in appropriate units of measure the limits of the SB SEF's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function, and identifying the factors (mechanical, electronic, or other) that account for the current limitations; (2) conduct periodic capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient

[413] For purposes of this PRA, references to "trading interest" includes any order, request for quotation response, quotation, or any other trading interest on the SB SEF.

[414] *See supra* note 227 and accompanying text regarding the definition of "participant."

manner; (3) develop and implement reasonable procedures to review and keep current its system development and testing methodology; (4) review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters, and; (5) establish adequate contingency and disaster recovery plans which shall include plans to resume trading of security-based swaps by the SB SEF no later than the next business day following a wide-scale disruption.

3. Reporting Requirements for SB SEFs

A number of the proposed rules under Regulation SB SEF would require SB SEFs, SB SEF participants and other persons to report or provide information to the Commission or to a SB SEF. Proposed Rules 814, 816(d), 818(a)(3), 818(e), 818(f), 822(a)(2), 822(a)(3), and 822(a)(4) each would contain a reporting requirement.[415] These requirements to report or provide information to the Commission would result in a paperwork burden.

Proposed Rule 814 addresses the ability of a SB SEF to obtain information from its participants, and the ability of Commission representatives to obtain information from a SB SEF and its participants. Proposed Rule 814(a) would require a SB SEF to establish and enforce rules requiring its participants to provide information or documents to the SB SEF upon request. The information or documents requested may include any information that is necessary to permit the SB SEF to perform its regulatory responsibilities, including, without limitation, any financial information, books, accounts, records, files, memoranda, correspondence, and any other information pertaining to trading interest entered and transactions executed on or through the SB SEF. Proposed Rule 814(a) also would direct a SB SEF to require its participants to allow access by any Commission representative to examine the participant's books and records and to obtain or verify information related to trading interest entered or transactions executed on or through the SB SEF.[416] Proposed Rule 814(b) would direct a SB SEF to allow access by any Commission representative to examine the SB SEF's books and records and to obtain or verify information related to trading interest entered or transactions executed on or through the SB SEF. Proposed Rule 814(b)(3) would require a SB SEF to have the capacity to carry out such international information-sharing agreements as the Commission may require.

Proposed Rule 816(d) would require a SB SEF to notify the Commission promptly of any exercise of its emergency authority, and within two weeks following cessation of an emergency, submit to the Commission a report explaining the basis for declaring an emergency, how conflicts of interest were minimized in the SB SEF's exercise of its emergency authority, and the extent to which the SB SEF considered the effect of its emergency action on the markets for the SB swap and any security or securities underlying the SB swap.

Proposed Rule 818 would establish both recordkeeping and reporting obligations for SB SEFs. Proposed Rule 818(e) would require a SB SEF to report to the Commission such information as the Commission may, from time to time, determine to be necessary to perform the duties of the Commission under the Exchange Act. Proposed Rule 818(f) would require a SB SEF to provide to any representative of the Commission, upon request, copies of documents required to be kept and preserved pursuant to the recordkeeping requirements of proposed Rules 818(a) and (b).

Proposed Rule 822 addresses system safeguards for the SB SEF. Proposed Rule 822(a)(2) would require a SB SEF to submit to the Commission on an annual basis an objective review with respect to those systems that support or are integrally related to the performance of the SB SEF's activities. If the objective review is performed by an internal department, an objective, external firm would be required to assess the internal department's objectivity, competency, and work performance. Proposed Rule 822(a)(3) would require a SB SEF to promptly notify the Commission in writing of material systems outages and any remedial measures implemented or contemplated and submit to the Commission within five business days of when the outage occurred a written description and analysis of the outage and any remedial measures that have been implemented or are contemplated. Proposed Rule 822(a)(4) would require a SB SEF to notify the Commission in writing at least thirty calendar days before implementation of any planned material systems changes.

4. Recordkeeping Required Under Regulation SB SEF

Proposed Rule 818(a) would require a SB SEF to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records, including the audit trail records required pursuant to proposed Rule 818(c), as shall be made and received in the conduct of its business. Proposed Rule 818(b) would require SB SEFs to keep and preserve such documents and other records for a period of not less than five years, the first two years in an easily accessible place. Proposed Rule 818(c) would require SB SEFs to establish and maintain accurate, time-sequenced records of all trading interest and transactions received by, originated on, or executed on the SB SEF. In addition, proposed Rule 811(b)(3) would require that a SB SEF make and keep records relating to all grants of access and the basis for such grant, and all denials or limitations of access to the SB SEF and the reasons for such denial or limitation. Proposed Rule 811(h) would require a SB SEF to make and keep records relating to all disciplinary proceedings, sanctions imposed, and appeals thereof.[417]

5. Timely Publication of Trading Information Requirement for SB SEFs

Proposed Rule 817(a)(1) would require a SB SEF to have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF.[418]

[415] In addition, proposed Rule 823 would require the SB SEF's CCO to submit to the Commission an annual compliance report, along with a financial report. The paperwork burden associated with the CCO's reports, including for proposed Rules 811(b)(4) and 811(g), and 814(b) that set forth certain items to be addressed in the CCO's reports, is addressed separately in Section XXVII.A.7., below.

[416] The Commission notes that proposed Rule 813(c)(2) similarly requires a SB SEF to establish and enforce rules that require any participant that enters any trading interest or executes any transaction on the SB SEF to provide the Commission with prompt access to its books and records. The Commission considers the prompt access requirement of proposed Rule 813(c)(2) to be included in the burden estimates of proposed Rule 814(a) for purposes of this PRA analysis.

[417] The records required by proposed Rules 811(b)(3) and 811(g) would be included in the business records required to be kept pursuant to proposed Rule 818. Therefore, the Commission preliminarily believes that the paperwork burden for these rules would be included in the estimated burden for proposed Rule 818. *See infra* note 493 and accompanying text.

[418] Proposed Rule 817(a)(2) requires every SB SEF to make public timely information on price, trading volume, and other trading data on SB swaps to the extent required by the Commission. The Commission notes that proposed Rule 817(a)(2) does not require a SB SEF to make public timely information on price, trading volume, and other trading data on SB swaps. Rather, the Commission has proposed that other parties be responsible for timely publication of trading information. *See* Reporting and Dissemination Release *supra* note 6.

6. Rule Filing and Product Filing Processes for SB SEFs

Proposed Rules 805 and 806 relate to the submission to the Commission of filings of new or amended rules, while proposed Rules 807 and 808 relate to the submission to the Commission of filings to make SB swap products available to trade. Proposed Rules 805, 806, 807, and 808 would impose a collection of information burden on SB SEFs.[419]

Rule Filings: Proposed Rules 805 and 806 would require a SB SEF to submit rule filings for new rules or rule amendments, including changes to an existing product's terms or conditions.[420] Under proposed Rules 805(a) and 806(a), a SB SEF could submit either a voluntary request for prior approval or a self-certified rule filing, respectively, for any new rules or rule amendments. Under both proposed rules, a SB SEF would be required to submit the rule filings electronically to the Commission in a format to be specified by the Commission.[421] Both proposed Rules 805(a) and 806(a) would require the SB SEF to include the following information in the requisite rule filings: (1) The text of the proposed rule or rule amendment (in the case of a rule amendment, deletions and additions would need to be indicated); (2) the proposed effective date or intended date of implementation, as applicable; (3) the documentation relied on by the SB SEF to establish the basis for compliance with the applicable provisions of the Exchange Act and the rules and regulations thereunder (including Section 3D(d) of the Exchange Act and the rules and regulations thereunder); (4) a certification or written statement, as applicable, that the SB SEF has published a notice of pending new rule or rule amendment, or a notice of pending certification, as applicable, on the SB SEF's Web site and a copy of the submission, concurrent with its filing with the Commission; (5) a description of any substantive opposing views on the rule that were expressed to the SB SEF by the Board or committee members, participants or market participants that were not incorporated into the rule (or, with respect to a self-certification filing under Rule 806(a), a statement that no such opposing views were expressed, if applicable); (6) a request for confidential treatment, if appropriate; and (7) for proposed amendments to a product's terms and conditions, a written statement that the SB SEF has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the product.

In addition, for voluntary requests for prior approval rule filings, proposed Rule 805(a) would also require SB SEFs to include: (1) A description of any action taken or anticipated to be taken to adopt the proposed rule by the SB SEF or its Board, or by any committee thereof, and a citation to the rules of the SB SEF that authorize the adoption of the proposed rule change; (2) an explanation of the operation, purpose and effect of the proposed new rule or rule amendment, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the SB SEF's framework of regulation; (3) any additional information that may be beneficial to the Commission in analyzing the new rule or rule amendment (and if the proposed rule affects, directly or indirectly, the application of any other rule of the SB SEF, the pertinent text of any such rule must be set forth and the anticipated effect described); and (4) and the identification of any Commission rule or regulation that Commission may need to amend or interpret in order to approve the new rule or rule amendment and, to the extent that such an amendment or interpretation is necessary to accommodate the new rule or rule amendment, a reasoned analysis supporting the proposed amendment or interpretation.

For self-certification rule filings, proposed Rule 806(a) also would require a SB SEF to include: (1) A certification by the SB SEF that the rule complies with the Exchange Act and Commission rules and regulations thereunder; and (2) upon request of any representative of the Commission, additional evidence, information, or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the SB SEF's compliance with any of the requirements of the Exchange Act or the rules and regulations thereunder.

Product Filings: Proposed Rules 807 and 808 would require a SB SEF to submit product filings prior to trading a SB swap. Under proposed Rules 807(a) and 808(a), a SB SEF could submit either a self-certified product submission or voluntary request for prior approval product filing, respectively, before trading a SB swap. Under both proposed rules, a SB SEF would be required to submit the product filings electronically to the Commission in a format specified by the Commission. Both proposed Rules 807(a) and 808(a) would require SB SEFs to include the following information in the product filings: (1) A copy of the SB swap's terms and conditions, (2) the documentation relied on to establish the basis for compliance with the Exchange Act and rules and regulations thereunder (including Section 3D(d) of the Exchange Act and the rules and regulations thereunder); (3) a written statement verifying that the SB SEF has undertaken a due diligence review of the legal conditions, including legal conditions that relate to contractual and intellectual property rights, that may materially affect the trading of the SB swap; (4) a request for confidential treatment, if appropriate; and (5) a certification that the SB SEF has published on its Web site a notice of pending request for approval, or a notice of pending certification, as applicable, and a copy of the submission, concurrent with the filing of the submission with the Commission. In addition, for self-certification product filings, proposed Rule 807(a) also would require a SB SEF to include the following information: (1) The intended date on which the SB swap may begin trading, and (2) a certification by the SB SEF that the SB swap to be traded complies with the Exchange Act and the rules and regulations thereunder, including Section 3D(d) of the Exchange act and the rules and regulations thereunder.

In addition, proposed Rules 807(b) and 808(b) would require a SB SEF to provide, upon request of any representative of the Commission, additional evidence, information, or data that demonstrates that the SB swap meets, initially or on a continuing basis, all of the requirements of the Exchange Act and rules and regulations thereunder.

7. Requirements Relating to the SB SEF's Chief Compliance Officer

Proposed Rule 823 addresses the obligations of the SB SEF's CCO, including the CCO's performance of his or her statutory duties with respect to the SB SEF and its statutory

[419] The Commission expects to conduct a separate rulemaking that would propose the form for the electronic submission of such filings to the Commission and the procedures pertinent to such form. Should the Commission propose any such form and associated procedures, it would include a collection of information burden as part of that proposed rulemaking.

[420] Filings that relate to proposed changes to an existing SB swap's terms or conditions would be submitted under proposed Rules 806 or 807.

[421] *See supra* Section XXIII.

requirement to prepare and submit to the Commission annual compliance and financial reports.

Proposed Rule 823(a) would require the SB SEF's Board to designate a CCO to perform the duties identified in proposed Rule 823(b) through (e). Under proposed Rule 823(b)(6) and (7), the CCO would be responsible for establishing procedures for the remediation of noncompliance issues identified by the CCO identified through any compliance office review, look-back, internal or external audit finding, self-reported error or validated complaint, and establishing appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

The CCO also would be required under proposed Rule 823(c) and (d) to prepare and submit annual compliance reports to the Commission and the SB SEF's Board containing, at a minimum: (1) A description of the SB SEF's enforcement of its policies and procedures; (2) information on all investigations, inspections, examinations, and disciplinary cases opened, closed, and pending during the reporting period; (3) all grants of access (including, for all participants, the reasons for granting such access) and all denials or limitations of access (including for each applicant, the reasons for denying or limiting access), consistent with proposed Rule 811(b)(3); (4) any material changes to the policies and procedures since the date of the preceding compliance report; (5) any recommendation for material changes to the policies and procedures as a result of the annual review, the rationale for such recommendation, and whether such policies and procedures were or will be modified by the SB SEF to incorporate such recommendation; (6) the results of the SB SEF's surveillance program, including information on the number of reports and alerts generated, and the reports and alerts that were referred for further investigation or for an enforcement proceeding; (7) any complaints received regarding the SB SEF's surveillance program; and (8) any material compliance matters identified since the date of the preceding compliance report.

The CCO is required under proposed Rule 823(e)(1) and (2) to submit annually a financial report for the SB SEF and for certain affiliated entities of the SB SEF. Among other things, the annual financial report for the SB SEF must be audited by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01), be a complete set of financial statements of the SB SEF that are prepared in accordance with U.S. generally accepted accounting principles for the two most recent fiscal years of the SB SEF. For certain affiliated entities (every subsidiary in which the applicant has, directly or indirectly, a 25% interest and for every entity that has, directly or indirectly, a 25% interest in the applicant), the SB SEF must provide a financial report consisting of a complete set of unconsolidated financial statements (in English) for the latest two fiscal years and include such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. As proposed, the reports for the SB SEF and for the SB SEF's affiliated entities would be provided in XBRL consistent with Rules 405(a)(1), (a)(3), (b), (c), (d) and (e) of Regulation S–T.[422] The Commission notes that these annual financial reports are the same as those required to be produced upon registration and annually pursuant to Exhibits F and H to proposed Form SB SEF for the SB SEF. In addition, pursuant to Exhibit H to proposed Form SB SEF, the Commission may request unaudited financial information for any other affiliated entity not covered by the 25% interest threshold discussed above.

8. Surveillance Systems Requirements for SB SEFs

Several proposed rules under Regulation SB SEF would require a SB SEF to electronically surveil its market and to maintain an automated surveillance system. To the extent that such surveillance and systems would require a SB SEF to collect and assess data and other information, such rules would result in a collection of information.

Proposed Rule 811(j) would require a SB SEF to have the capacity to capture information that may be used in establishing whether rule violations have occurred, including through the use of automated surveillance systems as set forth in proposed Rule 813(b). Proposed Rule 813(a)(2) would require a SB SEF to monitor trading in SB swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. Proposed Rule 813(b) would require a SB SEF to have the capacity and appropriate resources to electronically monitor trading in SB swaps on its market by establishing an automated surveillance system, including through real-time monitoring of trading and use of automated alerts.[423]

9. Access by Non-Registered Eligible Contract Participants

Proposed Rule 809(d)(1) would require a SB SEF that provides direct access to non-registered ECPs as participants to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.[424] Proposed Rule 809(d)(2) would require that the risk management controls and supervisory procedures for granting access to ECPs as participants of the SB SEF to be reasonably designed to ensure compliance with all regulatory requirements.[425]

10. Composite Indicative Quote and Executable Bids and Offers

Proposed Rule 811(e) would require a SB SEF that operates an RFQ platform to create and disseminate through the SB SEF a composite indicative quote, made available to all participants, for SB swaps traded on or through the SB SEF. The Commission's proposed interpretation of SB SEF would require each SB SEF, at the minimum, to provide any participant with the ability to make and display executable bids or offers accessible to all participants on the SB SEF, if the participant wishes to do so.

B. Proposed Use of Information

1. Registration Requirements for SB SEFs and Form SB SEF

As discussed above, proposed Rules 801, 802, 803 and 804 would require an applicant to register on Form SB SEF, file certain amendments and updates to Form SB SEF, file other supplemental information with the Commission with respect to the trading of SB swaps, and provide notice to the Commission of the SB SEF's withdrawal of registration. The information collected pursuant to these proposed rules would enhance the ability of the Commission to determine whether to approve the registration of an entity as a SB SEF; to monitor and oversee SB SEFs; to determine that SB

[422] *See* 17 CFR 232.405.

[423] The collection of information burdens associated with the audit trail provisions of proposed Rule 818(a) and (c) are discussed in the sections of this PRA analysis relating to recordkeeping.

[424] *See* proposed Rule 809(d)(1). Non-registered ECPs are eligible contract participants that are not registered with the Commission as a SB swap dealer, major SB swap participant, or broker (as defined in section 3(a)(4) of the Exchange Act).

[425] *See* proposed Rule 809(d)(2).

SEFs initially comply, and continue to operate in compliance, with the Exchange Act, including the Core Principles applicable to SB SEFs, and the rules and regulations thereunder; to carry out its statutorily mandated oversight functions; and to maintain accurate and updated information regarding SB SEFs. Because the registration information would be publicly available, it could also be useful to SB SEF's participants, other market participants, other regulators, and the public generally.

2. Rule-Writing Requirements for SB SEFs

The proposed provisions of Regulation SB SEF requiring that SB SEFs establish certain rules, policies and procedures would help SB SEFs comply with the Exchange Act, including the Core Principles applicable to SB SEFs, and the rules and regulations thereunder. The rules also would be useful to the SB SEF's participants in understanding and complying with the requirements of the SB SEF and to other market participants, other regulators, and the public generally.

3. Reporting Requirements for SB SEFs

The information that would be collected under the proposed provisions of Regulation SB SEF requiring SB SEFs, SB SEF participants, and other persons to submit certain reports and provide certain information upon request would be used by the Commission to assist in its oversight of SB SEFs and the SB swap markets.

4. Recordkeeping Required Under Regulation SB SEF

Proposed Rule 813(c) would aid the SB SEF in detecting and deterring fraudulent and manipulative acts with respect to trading on its market, as well as help it to fulfill the statutory requirement in Core Principle 4 that a SB SEF monitor trading in SB swaps, including through comprehensive and accurate trade reconstructions. The proposed rule also would aid the Commission in carrying out its responsibility to oversee SB SEFs.

Proposed Rules 818(a) and (b) would help to ensure that records exist, and thus would be available to the Commission pursuant to the proposed reporting requirements. Access to these records would provide a valuable tool to help the Commission carry out its oversight responsibility over SB SEFs and the SB swap markets in general.

The audit trail information required to be maintained under the proposed Rule 818(c) would facilitate the ability of the SB SEF and the Commission to carry out their respective obligations under the Exchange Act, by providing a record of the complete history of all trading interest entered and transactions executed on the SB SEF, which data could be used to help detect abusive or manipulative trading activity, prepare reconstructions of activity on the SB SEF or in the SB swaps market, and generally to understand the causes of unusual market activity. In addition, proposed Rule 811(b)(3) would require every SB SEF to make and keep records of all grants, denials, or limitations of access to the SB SEF, which would provide the Commission an important tool to help it assess whether the SB SEF is meeting its duty to provide fair and impartial access to its facility. Further, proposed Rule 811(h) would require the SB SEF to make and keep records specifically of all disciplinary proceedings and appeals, which would allow the Commission to review the disciplinary process at a SB SEF and would provide the Commission an additional tool to carry out its oversight responsibilities.

5. Timely Publication of Trading Information Requirement for SB SEFs

The requirement contained in proposed Rule 817 that a SB SEF have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF, would assist the SB SEF in carrying out its regulatory responsibilities under the Exchange Act, including, without limitation, the proposed requirements that every SB SEF must keep and preserve books and records of activities related to its business, and allow access by the Commission to obtain or verify other information related to orders entered and transactions executed on or through the SB SEF's facilities. In addition, the Commission believes that every SB SEF must have the capacity to capture this information to enable the SB SEF to comply with reasonable requests to provide information to others, including, SB SEF participants, counterparties, registered SDRs, or regulatory authorities.

6. Rule Filing and Product Filing Processes for SB SEFs

Proposed Rules 805 and 806 would require a SB SEF to submit new rule or rule amendments as rule filings either through a voluntary prior approval process or a self-certification process. The information that would be collected under these proposed rules would help ensure compliance by the SB SEF with the provisions of the Exchange Act, including the Core Principles applicable to SB SEFs, and the rules and regulations thereunder, as well as assist the Commission in overseeing the SB SEF's compliance with its regulatory obligations. This information also would be useful to the SB SEF's participants, because they would be subject to such new or amended rules and thus would have an interest in learning about those rules and potentially in submitting to the Commission comments on any proposed new or amended rules. Other market participants, other SB SEFs, and other regulators, as well as the public generally, may find information about proposed new or amended rules useful.

Proposed Rules 807 and 808 would require a SB SEF to submit filings for new products that they make available for trading either through a self-certification process or a voluntary prior approval process. The information that would be collected under these proposed rules would help ensure that any SB swap that is available to trade on the SB SEF would comply with the provisions of the Exchange Act, including the Core Principles applicable to SB SEFs, and the rules and regulations thereunder, as well as assist the Commission in overseeing the SB SEF's compliance with its regulatory obligations. In particular, the requirements of proposed Rules 807(a) and 808(a) should help the Commission determine the SB SEF's compliance with the Core Principles that apply specifically to products, such as Core Principle 3 which would require a SB SEF to ensure that a SB swap trading on its facility is not readily susceptible to manipulation. Other market participants, other SB SEFs, and other regulators, as well as the public generally, may find information about the new products useful.

7. Requirements Relating to the SB SEF's CCO

As discussed above, proposed Rule 823 would require that a SB SEF's CCO establish certain policies relating to noncompliance issues as well as prepare and submit to the Commission both an annual compliance report and an annual financial report. The information that would be collected under this proposed rule would help ensure compliance by SB SEFs with the provisions of the Exchange Act, including the Core Principles applicable to SB SEFs, and the rules and regulations thereunder, as well as assist the Commission in overseeing the SB SEFs. The Commission could use the annual compliance report to help it evaluate

whether the SB SEF is carrying out its statutorily-mandated regulatory obligations and, among other things, to discern the scope of any denials of access or refusals to grant access by the SB SEF and to obtain information on the status of the SB SEF's regulatory compliance program. The annual financial report would provide the Commission with important information on the financial health of the SB SEF.

8. Surveillance Systems Requirements for SB SEFs

The proposed rules requiring a SB SEF to maintain certain surveillance systems and monitor trading would enable the SB SEFs to have the capacity and resources to fulfill its obligations under the Exchange Act to oversee trading on its market, and to prevent manipulation and other unlawful activity or disruption of the market. These systems would help the SB SEF to identify and investigate market behavior that may be improper and bring any necessary disciplinary actions.

9. Access by Non-Registered Eligible Contract Participants

Proposed Rule 809 would permit a SB SEF to provide access to the SB SEF by non-registered ECPs, provided that the conditions of the proposed rule relating to such access would be satisfied. Proposed Rule 809(d) would require a SB SEF that would permit access to non-registered ECPs [426] to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. The risk management controls and supervisory procedures for granting access to non-registered ECPs would be required to be reasonably designed to ensure compliance with all regulatory requirements. Since non-registered ECPs are not directly subject to capital or other financial requirements, there is a concern that, in the absence of risk management controls and supervisory procedures, they could enter into trades that exceed appropriate capital or credit limits. The proposal relating to risk management controls and supervisory procedures is intended to help manage these risks associated with allowing non-registered ECPs to have direct access to an SB SEF's market.

10. Composite Indicative Quote and Executable Bids and Offers

As discussed above, proposed Rule 811(e) would require a SB SEF that operates an RFQ platform to create and disseminate through the SB SEF a composite indicative quote, made available to all participants, for SB swaps traded on or through the SB SEF. The Commission preliminarily believes that a composite indicative quote would provide a certain level of pre-trade transparency for an RFQ platform. In addition, the Commission's proposed interpretation of SB SEF would require each SB SEF, at the minimum, to provide any participant with the ability to make and display executable bids or offers accessible to all participants on the SB SEF, if the participant wishes to do so. The Commission preliminarily believes that this functionality would provide greater access to the SB SEF for participants.

C. Respondents

The collection of information associated with the proposed Regulation SB SEF would apply to entities seeking to register as, and to registered, SB SEFs. In the Dodd-Frank Act, Congress incorporated into the Exchange Act a definition of SB SEF and mandated the registration and regulation of these new facilities.[427] There currently are no registered SB SEFs. Based on conversations with the CFTC and industry sources, the Commission preliminarily believes that approximately 10 to 20 entities could seek to register as SB SEFs and thus be subject to the collection of information requirements of these proposed rules. The Commission is using the higher estimate of 20 SB SEFs for this PRA analysis.[428]

In addition, proposed Rules 813(c) and 814(a) would impose collection of information burdens on SB SEF participants. Based on conversations with industry sources, the Commission preliminarily believes that there could be a total of 275 persons that could become SB SEF participants and would thus be subject to the collection of information requirements of the proposed rules.[429]

Except with regard to the collection of information burdens imposed on SB SEF participants pursuant to proposed Rules 813(c) and 814(a), as discussed further in the sections of this PRA discussing the reporting and recordkeeping requirements of Regulation SB SEF, the respondents subject to the collection of information burdens associated with proposed Regulation SB SEF would be SB SEFs.

D. Total Annual Reporting and Recordkeeping Burden

1. Registration Requirements for SB SEFs and Form SB SEF

Initial filings on Form SB SEF by a prospective SB SEF seeking to register with the Commission pursuant to proposed Rule 801 would be made on a one-time basis. As discussed above, no SB SEFs currently are registered with the Commission and the Commission preliminarily estimates that 20 entities initially would seek to register with the Commission as SB SEFs. The Commission's estimate regarding the initial burden that a SB SEF would incur to file a Form SB SEF is informed by its estimate of the number of hours necessary to complete a Form 1 for registration of a national securities exchange. The Commission calculated in 2010 that Form 1 takes 47 hours to complete.[430] Although the requirements of Form 1 are not identical to the requirements of proposed Form SB SEF, the Commission preliminarily believes that they are substantially similar for PRA purposes. Similar to Form 1, the information that would be required on Form SB SEF generally would consist of copies of existing documents that would be prepared by a SB SEF in the ordinary course of its business. As noted above, no SB SEFs currently are registered with the Commission and no framework for registration of SB SEFs currently exists. Therefore, the Commission preliminarily believes that, during the initial implementation period of

[426] *See* proposed Rule 809.

[427] *See* Public Law 111–203, § 761(a) (adding Section 3(a)(77) of the Exchange Act), defining the term "security-based swap execution facility." *See also* Public Law 111–203, § 763(c) (adding Section 3D of the Exchange Act).

[428] This estimate comports with the estimated number of SB SEFs contained in the Regulation MC Proposing Release, *supra* note 82.

[429] 275 = 50 (estimated number of SB swap dealers that would be SB SEF participants) + 5 (estimated number of major SB swap participants that would be SB SEF participants) + 10 (estimated number brokers that would be SB SEF participants) + 210 (estimated number of ECPs that would be SB SEF participants). The Commission recently proposed rules to define a number of terms used in Title VII, including, among others, "security-based swap dealer" and "major security-based swap participant." *See* Securities Exchange Act Release No. 63452 (December 7, 2010), 75 FR 80174 (December 21, 2010). As part of that proposal, the Commission preliminarily estimated that approximately 50 entities may be required to register as SB swap dealers under the proposed rules. *See* 75 FR at 80209 n.188. The Commission further estimated that no more than ten entities would have SB swap positions large enough that they would have to monitor whether they meet the thresholds defining a major SB swap participant. *See* 75 FR at 80207–08. For purposes of these proposed rules, the Commission conservatively assumes that there would be a total of five major SB swap participants, while recognizing that in fact there may be fewer than five.

[430] *See* 75 FR 32824 (June 9, 2010) (outlining the most recent Commission calculations regarding the PRA burdens for Form 1 and Rules 6a-1 and 6a-2 under the Exchange Act).

Regulation SB SEF, it could take a SB SEF more time to compile the necessary documents and information required by the exhibits to Form SB SEF than it would for an applicant to become a national securities exchange to compile documents and information to comply with requirements of Form 1. The procedures for registration as a national securities exchange are well-settled and, therefore, an entity that intends to register as national securities exchange could anticipate the form of the documents and other information that it would need to compile to register on Form 1.[431] Based on these factors, the Commission preliminarily estimates that an applicant would incur an average burden of 100 hours to prepare and file an initial Form SB SEF, including all exhibits thereto, except Exhibits F and H requiring certain financial reports, and Exhibit P requiring certain opinions of counsel, which are discussed separately below.[432] Therefore, the Commission preliminarily estimates that the aggregate one-time burden for all respondents to file the initial Form SB SEF, including all exhibits thereto, except Exhibits F and H requiring certain financial reports and Exhibit P requiring opinions of counsel, would be 2,000 hours.[433] The Commission preliminarily believes that SB SEFs would prepare Form SB SEF internally. The Commission requests comment on the accuracy of this estimate.

Exhibits F and H to proposed Form SB SEF would require an applicant to submit an annual financial report that would have to satisfy a number of requirements, including the requirement that a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X[434] audit each financial report relating to the SB SEF (unaudited for certain affiliated entities). The Commission preliminarily believes that it is unlikely that, during the initial implementation period of Regulation SB SEF, a SB SEF would have prepared such reports in the ordinary course of business prior to applying for registration on Form SB SEF. Therefore, in connection with its efforts to register as a SB SEF with the Commission on proposed Form SB SEF, an applicant would incur an initial burden to generate such financial reports. Based on conversations with operators of current trading platforms and the Commissions experience with entities of similar size, the Commission preliminarily estimates that the financial reports relating to the SB SEF would generally require, on average, 500 hours per respondent to complete and cost $500,000 for independent public accounting services per respondent.

The Commission believes that the unaudited reports required for certain affiliated entities and to be made available upon request by the Commission for other affiliated entities would not be overly time consuming to produce because, based on the Commission's experience with Form 1 filers, a respondent's accounting system should have this information available. Furthermore, because the information would not have to be audited, a respondent would be able to compile the required information using a computer and commercially available software that it generally would own for pre-existing accounting purposes and then would submit the information to the Commission. Based on the number of unaudited financial statements the Commission receives from filers of Form 1 and the substance contained in these reports, the Commission estimates that it would take 40 hours to compile, review, and submit these reports.

However, as proposed, all of these reports would be required to be provided in XBRL, as required in Rules 405(a)(1), (a)(3), (b), (c), (d) and (e) of Regulation S–T.[435] This would create an additional burden on respondents. The Commission preliminarily estimates, based on its experience with other data tagging initiatives, that these requirements would add an additional burden of an average of 54 hours and $23,000 in outside software and other costs per respondent. Thus, for complying with the financial statement requirements under Exhibits F and H in connection with an initial application on proposed Form SB SEF, the Commission estimates an aggregate total initial burden of 11,880 hours[436] and $10,460,000 for all respondents.[437] The Commission solicits comments as to the accuracy of these estimates.

Pursuant to the requirements of proposed Rule 801(e), Exhibit P to proposed Form SB SEF would require an applicant that is controlled by any other person to provide an opinion of counsel that any person that controls such SB SEF has consented to and can, as a matter of law, provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, and submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF. This creates an additional burden for SB SEFs controlled by other persons. Based on similar requirements on Form 20–F, the Commission preliminarily estimates that this additional burden would add 1 hour and $900 in outside legal costs for each affected SB SEF.[438] For PRA

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[431] For example, because an entity seeking to register as a national securities exchange would know that Exhibit E to Form 1 requires an applicant to describe the manner and operation of the electronic trading system to be used to effect transactions on the exchange, such entity likely would prepare such a description in the ordinary course of its business in anticipation of applying for registration as a national securities exchange on Form 1. However, because the requirements of Form SB SEF would be set forth for the first time in connection with this proposed rulemaking, a SB SEF previously may not have prepared a description of the manner and operation of its trading system in the ordinary course of business and would have to do so to comply with Exhibit I to Form SB SEF.

[432] As discussed above, proposed Rule 801(d) would require a SB SEF to designate and authorize on Form SB SEF an agent in the U.S. to accept notice or service of process, pleadings, or other documents in any action or proceedings brought against it to enforce the Federal securities laws and the rules and regulations thereunder. Proposed Rule 801(e) would require an applicant that is controlled by any other person to certify on Form SB SEF that any person that controls such SB SEF would consent to and could, as a matter of law, provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the SB SEF, and submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the SB SEF. Proposed Rule 801(f) would require a non-resident person applying for registration to certify on Form SB SEF that it could, as a matter of law, provide the Commission with prompt access to its books and records and submit to onsite inspection and examination by representatives of the Commission. Proposed Rule 814(b)(4) would require a SB SEF to certify at the time of registration on Form SB SEF that the SB SEF would have the capacity to fulfill its obligations under international information sharing agreements to which it is a party. The Commission preliminarily believes that the burden associated with these requirements would be included in the 100-hour burden associated with the initial registration on Form SB SEF required by proposed Rule 801(a). These proposed requirements currently are not included on Form 1. In addition, proposed Rules 801(e) and (f) would require SB SEFs that are controlled by other persons and non-resident SB SEFs to provide certain opinions of counsel. The Commission preliminarily believes that the burden associated with these requirements would be included in the burden associated with Exhibit P to Form SB SEF discussed below.

[433] 2,000 hours = 20 (number of SB SEF respondents) x 100 hours (initial hourly burden to comply with Form SB SEF, except for Exhibits F, H and P).

[434] *See* 17 CFR 210.2–01.

[435] *See* 17 CFR 232.405.

[436] 11,880 hours = 20 (number of SB SEF respondents) × 594 hours (500 hours for audited SB SEF financial statements + 40 hours for unaudited financial statements of affiliated entities + 54 hours for XBRL formatting of submission).

[437] $10,460,000 = 20 (number of SB SEF respondents) × $523,000 ($500,000 for outside accounting services for auditing SB SEF's financial statements + $23,000 in outside software and other cost for formatting financial statement submissions in XBRL format).

[438] *See* Securities Exchange Act Release No. 49616 (Apr. 26, 2004), 69 FR 24016 (Apr. 30, 2004) (outlining the Commission's calculations regarding

purposes and in order to provide an estimate that is not under-inclusive, the Commission preliminarily estimates that all respondents applying for registration as a SB SEF pursuant to proposed Rule 801, or 20 SB SEFs, may be controlled by other persons and therefore subject to the additional burden imposed on SB SEF's controlled by other persons by Exhibit P. Thus, the Commission preliminarily estimates a total additional burden for all SB SEFs that are controlled by other persons to comply with the opinion of counsel requirements of Exhibit P of 20 hours [439] and $18,000.[440] The Commission solicits comments as to the accuracy of these estimates.

Pursuant to the requirements of proposed Rule 801(f), Exhibit P to proposed Form SB SEF would require a non-resident SB SEF to provide an opinion of counsel that the SB SEF can, as a matter of law, provide the Commission with access to the books and records of the SB SEF and submit to onsite inspection and examination by representatives of the Commission. This creates an additional burden for non-resident SB SEFs. Based on similar requirements on Form 20–F, the Commission preliminarily estimates that this additional burden would add 1 hour and $900 in outside legal costs per respondent.[441] For PRA purposes, the Commission preliminarily estimates that one out of the 20 estimated persons applying for registration as a SB SEF pursuant to proposed Rule 801 may be "non-resident" SB SEFs and therefore subject to the additional burden imposed on non-resident SB SEFs by Exhibit P. Thus, the Commission preliminarily estimates a total additional burden for all non-resident SB SEFs to comply with the opinion of counsel requirements of Exhibit P of 1 hour [442] and $900.[443]

Therefore, the Commission preliminarily estimates that the total one-time burden for a SB SEF to prepare and file the initial Form SB SEF, including all exhibits thereto except for Exhibit P, would be 694 hours [444] and $523,000.[445] In addition, SB SEFs controlled by other persons and non-resident SB SEFs would incur an additional one-time burden of 1 hour and $900 to prepare and file Exhibit P to proposed Form SB SEF. This would result in a total initial burden for all SB SEFs of 13,901 hours [446] and $10,478,900.[447] The Commission requests comment on the accuracy of these estimates.

The Commission preliminarily estimates that each SB SEF would file four amendments to Form SB SEF pursuant to proposed Rules 802(a) and (b) per year, and that each SB SEF would incur an average burden of 25 hours to prepare each amendment pursuant to proposed Rules 802(a) and (b), for a total annual burden of 100 hours. The Commission bases this estimate on previous Commission estimates relating to amendments to Form 1 filed by national securities exchanges pursuant to Rule 6a–2 under the Exchange Act.[448] The Commission preliminarily believes that SB SEFs would prepare these amendments to Form SB SEF internally.

The Commission preliminarily believes that two registered SB SEFs that are controlled by other persons out of all registered SB SEFs that are controlled by other persons per year would be required to file an amendment to Exhibit P to Form SB SEF pursuant to proposed Rule 802(c) due to changes in the legal or regulatory framework of any person that controls such SB SEFs. The Commission preliminarily believes that a SB SEF controlled by another person would incur the same burden to prepare an amended Exhibit P as it would to prepare the initial Exhibit P. Therefore, the Commission preliminarily estimates that a SB SEF controlled by another person would incur an average burden of 1 hour and $900 to prepare an amended Exhibit P pursuant to proposed Rule 802(c) per year,[449] and that all SB SEFs controlled by other persons would incur an aggregate burden of 2 hours [450] and $1,800 per year [451] to prepare amended Exhibit Ps pursuant to proposed Rule 802(c).

The Commission preliminarily believes that one non-resident SB SEF would be required to file one amendment to Exhibit P to Form SB SEF pursuant to proposed Rule 802(d) per year. The Commission preliminarily believes that a non-resident SB SEF would incur the same burden to prepare an amended Exhibit P as it would to prepare the initial Exhibit P. Therefore, the Commission preliminarily estimates that a non-resident SB SEF would incur an average burden of 1 hour and $900 to prepare each amended Exhibit P pursuant to proposed Rule 802(d) per year,[452] and that this estimate represents the aggregate burden for all non-resident SB SEFs per year.

The Commission believes that each SB SEF would file one update to Form SB SEF pursuant to proposed Rule 802(f) per year, and that it would take a SB SEF a longer time to file an annual update to Form SB SEF pursuant to proposed Rule 802(f) than it would take a SB SEF to file an amendment to Form SB SEF pursuant to proposed Rules

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the PRA burdens resulting from having to provide a legal opinion and additional disclosure required by Instruction 3 to Item 7.B to Form 20–F). The Commission calculated that such requirements would result in an additional burden to affected foreign private issuers of 3 hours, of which 25%, or approximately 1 hour, would be incurred by the foreign private issuers themselves, and 75% would be incurred by outside firms, including legal counsel, which would cost approximately $900 ($900 = 3 hours (estimated burden to comply with proposed Rule 801(f)) × 0.75 (portion of estimated burden incurred by outside legal counsel × $400 (hourly rate for an outside attorney)). The Commission preliminarily continues to estimate the hourly rate for an outside attorney at $400 per hour, based on industry sources. *See* Securities Exchange Act Release No. 62184A (May 27, 2010), 75 FR 33100 at note 505 (June 10, 2010) ("Municipal Securities Disclosure Release").

[439] 20 hours = 20 (number of SB SEF respondents controlled by other persons) × 1 (hourly burden to comply with Exhibit P).

[440] $18,000 = 20 (number of SB SEF respondents controlled by other persons) × $900 (cost for outside legal services to comply with Exhibit P).

[441] *See supra* note 438.

[442] 1 hour = 1 (number of non-resident SB SEF respondents) × 1 (hourly burden to comply with Exhibit P).

[443] $900 = 1 (number of non-resident SB SEF respondents) × $900 (cost for outside legal services to comply with Exhibit P).

[444] 694 hours = 100 hours to comply with Form SB SEF except for Exhibits F, H and P + 500 hours for audited SB SEF financial statements + 40 hours for unaudited financial statements of affiliated entities + 54 hours for XBRL formatting of submission.

[445] $523,000 = $500,000 for outside accounting services for auditing SB SEF's financial statements + $23,000 in outside software and other cost for formatting financial statement submission in XBRL format.

[446] 13,901 = (20 (number of SB SEF respondents) × 694 hours (total initial burden to comply with Form SB SEF except for Exhibit P)) + (20 (number of SB SEF respondents controlled by other persons) × 1 hour (total initial burden to comply with Exhibit P)) + (1 (number of non-resident SB SEF respondents) × 1 hour (total initial burden to comply with Exhibit P).

[447] $10,478,900 = (20 (number of SB SEF respondents) × $523,000 (total initial cost to comply with Form SB SEF except for Exhibit P)) + (20 (number of SB SEF respondents controlled by other persons) × $900 (total initial cost to comply with Exhibit P)) + (1 (number of non-resident SB SEF respondents) × $900 (total initial cost to comply with Exhibit P)).

[448] The Commission calculated in 2010 that national securities exchanges file four amendments or periodic updates to Form 1 per year, incurring an average burden of 25 hours per amendment to comply with Rule 6a–2. *See* 75 FR 32824, *supra* note 430. While the requirements of Rule 6a–2 are not identical to the requirements of proposed Rules 802(a) and (b), the Commission believes that there is sufficient similarity for PRA purposes that the burden would be equivalent.

[449] *See supra* note 438 and accompanying text.

[450] 2 = 2 (number of SB SEFs controlled by other persons required to file an amended Exhibit P pursuant to proposed Rule 802(c) per year) × 1 hour (total annual burden to file an amended Exhibit P).

[451] $1,800 = 2 (number of SB SEFs controlled by other persons required to file an amended Exhibit P pursuant to proposed Rule 802(c) per year) × $900 (total annual cost burden to file an amended Exhibit P).

[452] *See supra* note 441 and accompanying text.

802(a) and (b), but less time than it would take a SB SEF to prepare an initial application on Form SB SEF. For each annual update to Form SB SEF, the SB SEF should be able to compile and submit the information more readily than it would take for the initial Form SB SEF submission because the SB SEF should already have much of the information required by the annual update in its possession. Therefore, the Commission preliminarily estimates that each SB SEF would incur an average burden of 50 hours to prepare each annual update to the Form SB SEF pursuant to proposed Rule 802(f).[453]

The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form SB SEF pursuant to proposed Rule 802 would be 3,003 hours[454] and $2,700.[455] The Commission requests comment on the accuracy of its estimates.

The Commission preliminarily estimates that the preparation and filing of supplemental information pursuant to proposed Rule 803(a) generally would involve photocopying existing documents and therefore should take less than one-half hour per response. The Commission similarly preliminarily estimates that where a SB SEF chooses to comply with the requirements of proposed Rule 803(b), which relates to supplemental information being made available continuously on the SB SEF's Web site, instead of proposed Rule 803(a), which relates to filing of the actual supplemental information, the response required by proposed Rule 803(b) should take less than one-half hour as well. The Commission preliminarily estimates that each SB SEF would make approximately 15 filings on an annual basis pursuant to proposed Rules 803(a) and (b) combined. The Commission bases these estimates on previous Commission estimates relating to supplemental material filed by national securities exchanges pursuant to Rule 6a–3.[456] Therefore, the Commission estimates that the total annual reporting burden under proposed Rule 803 for all SB SEFs would be 150 hours.[457] The Commission requests comment on the accuracy of this estimate.

Proposed Rule 804 would require that a SB SEF provide the Commission notice of withdrawal of registration and file an amended Form SB SEF to update any inaccurate information at the time of such notice of withdrawal. The Commission preliminarily estimates that one SB SEF per year would seek to withdraw its registration with the Commission and therefore be subject to the collection of information requirements in proposed Rule 804. The Commission preliminarily estimates that a SB SEF would incur an average burden of 1 hour to prepare and file with the Commission a notice of withdrawal of registration. The Commission preliminarily believes that the burden incurred by a SB SEF withdrawing its registration to file an amended Form SB SEF pursuant to proposed Rule 804 would be included in the estimated burden under proposed Rule 802(f) requiring annual updates to Form SB SEF. Therefore, the Commission estimates that the annual burden for all respondents pursuant to proposed Rule 804 would be 1 hour.

The Commission preliminarily estimates that the total annual hourly burden for all SB SEFs combined to comply with the registration requirements under Regulation SB SEF would be 3,154 hours[458] and the total one time hourly burden would be 13,901 hours.[459] The Commission preliminarily estimates that the total annual cost burden for all SB SEFs to comply with the registration requirements under Regulation SB SEF would be $2,700,[460] and the total one-time cost burden for all SB SEFs would be $10,478,900.[461] The Commission requests comment on the accuracy of these estimates.

2. Rule-Writing Requirements for SB SEFs

The proposed rules that would require a SB SEF to establish rules, policies and procedures to meet the requirements of various proposed rules in Regulation SB SEF are summarized in Section XXII.A.2. above. Based on its experience with the rule-writing process conducted by national securities exchanges and applicants to become national securities exchanges, the Commission believes that a SB SEF would spend an average of 10 hours to draft each rule, policy or procedure required to be established under Regulation SB SEF and that the SB SEF would handle this work internally. The Commission recognizes that in some cases, the SB SEF may take longer than 10 hours to draft a particular rule, policy or procedure, but in other cases, the SB SEF may take fewer than 10 hours to draft a particular rule, policy or procedure. Therefore, the Commission preliminarily believes that the 22 proposed rules, policies and procedures that a SB SEF would be required to draft under proposed Regulation SB SEF would carry a one-time paperwork burden of 220 hours per respondent, for a maximum total of 4,400 hours.[462] The estimated 220 hours per respondent also would include the time expended for review of the draft rules, policies or procedures by the SB SEF's management. The Commission requests

[453] Proposed Rules 811(b)(4) and 811(g)(2) would require SB SEFs to report information regarding grants, denials and limitations of access on Form SB SEF and to disclose all disciplinary actions taken annually on an amendment to Form SB SEF, respectively. In addition, proposed Rule 804(a) would require that a SB SEF intending to file a notice of withdrawal from registration as a SB SEF with the Commission file an amended Form SB SEF to update any inaccurate information at the time of such notice of withdrawal. The Commission preliminarily believes that the burdens associated with these requirements would be included in the burden associated with the annual update to Form SB SEF required by proposed Rule 802(f).

The Commission notes that, pursuant to proposed Rules 823(e)(1) and (2), the CCO of a SB SEF would be required to prepare annual updates to the financial reports required by Exhibits F and H. Therefore, the Commission preliminarily believes that any burden resulting from the requirement to update Exhibits F and H annually pursuant to proposed Rule 802(f) would be included in the burden associated with proposed Rule 823(e)(1) and (2) discussed in the sections of this PRA analysis relating to the duties of the SB SEF's CCO.

[454] 3,003 hours = (20 (number of SB SEF respondents) × 4 (number of filings pursuant to proposed Rules 802(a) and (b)) × 25 hours (burden per filing)) + (2 (number of respondents) × 1 (number of filings pursuant to proposed Rule 802(c)) × 1 hour (burden per filing)) + (1 (number of respondents) × (1 (number of filings pursuant to proposed Rule 802(d)) × 1 hour (burden per filing)) + (20 (number of SB SEF respondents) × (1 (number of filings pursuant to proposed Rule 802(f)) × 50 hours (burden per filing)).

[455] $2,700 = (2 (number of respondents) × 1 (number of filings pursuant to proposed Rule 802(c)) × $900 (burden per filing)) + (1 (number of respondents) × 1 (number of filings pursuant to proposed Rule 802(d)) × $900 (burden per filing)).

[456] The Commission calculated in 2010 that Rule 6a–3 would require national securities exchanges to make 25 filings per year at a burden of 0.5 hours per filing. 75 FR 32822 (June 9, 2010) (outlining the most recent Commission calculations regarding the PRA burdens for Rule 6a–3). While the requirements of Rule 6a–3 are not identical to those of proposed Rule 803, the Commission believes that there is sufficient similarity for PRA purposes that the burden would be equivalent. However, Rule 6a–3 contains a requirement for national securities exchanges to file certain monthly reports, while proposed Rule 803 contains no such requirement with respect to SB SEFs. Therefore, the Commission preliminarily estimates that a SB SEF would make 15 filings per year pursuant to proposed Rule 803, rather than 25 filings as estimated in connection with Rule 6a–3.

[457] 150 hours = 20 (number of SB SEF respondents) × 15 (number of filings per respondent) × .5 hours (burden per filing).

[458] 3,154 hours = 3,003 (estimated hourly burden to comply with proposed Rule 802) + 150 (estimated hourly burden to comply with proposed Rule 803) + 1 (estimated hourly burden to comply with proposed Rule 804).

[459] *See supra* note 446.

[460] *See supra* note 455.

[461] *See supra* note 447.

[462] 4,400 hours = 20 (number of SB SEF respondents) × 220 hours (one-time burden to draft 22 proposed rules, policies and procedures).

comment on the accuracy of this estimate.

The Commission preliminarily estimates that once a SB SEF has drafted the written rules, policies and procedures that it is required to establish pursuant to Regulation SB SEF, a SB SEF would spend approximately 10 hours per month to review its written rules, policies and procedures to ensure that they are up-to-date and remain in compliance with proposed Regulation SB SEF and to prepare any necessary new or amended rules, policies and procedures.[463] Therefore, the Commission preliminarily estimates that the provisions of proposed Regulation SB SEF requiring that a SB SEF establish certain rules, policies and procedures would result in an ongoing annual burden of 120 hours per respondent,[464] for a total estimated ongoing annual burden of 2,400 hours.[465] The Commission requests comment on the accuracy of this estimate.

3. Reporting Requirements for SB SEFs

Proposed Rule 814: Proposed Rule 814(a) would require a SB SEF to require its participants to provide information or documents to the SB SEF upon request. Proposed Rule 814(a) also would require the SB SEF to require its participants to provide information or documents to any representative of the Commission upon request.

As noted above, the Commission estimates that each SB SEF would have 275 participants.[466] Based on industry sources, the Commission believes it is likely that each participant would elect to be a member of each SB SEF. The Commission therefore estimates that each of these estimated 275 participants would be a participant of each SB SEF. The Commission therefore estimates that there would be a total of 275 SB SEF participants subject to the collection of information requirements of proposed Rule 814(a). The Commission requests comment on the accuracy of this estimate.

Based on its experience in requesting information from exchanges and exchange members for various purposes, the Commission estimates that it would require an average of 25 hours per response for a SB SEF participant to compile and transmit documents and information requested pursuant to proposed Rule 814(a) and that such requests would occur a total of 4 times each year per SB SEF participant.[467] Thus, the Commission estimates that the annual burden on each SB SEF participant to report documents or information pursuant to proposed Rule 814(a) would be 100 hours.[468] The Commission therefore estimates that the annual aggregate burden on SB SEF participants for all SB SEFs would be 27,500 hours.[469] The Commission believes that this work, should it be required, would be conducted internally. The Commission seeks comment on these proposed estimates.

Proposed Rule 814(b)(2) would require a SB SEF to provide information or documents to any representative of the Commission upon request. For PRA purposes, the Commission estimates that it would request information or documents under proposed Rule 814(b)(2) two times per year, per respondent. The amount of time that it would take for a respondent to comply with a request would vary depending on the nature and extent of the request. Based on its experience in requesting information from exchanges for a variety of purposes, the Commission estimates that it would require an average of 25 hours per response for a SB SEF to compile and transmit documents and information requested by the Commission, for an annual hourly burden of 50 hours per respondent. Thus, the Commission preliminarily estimates the aggregate annual burden on a SB SEF to comply with requests for documents or information pursuant to proposed Rule 814(b)(2) would be 1,000 hours.[470] The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

Proposed Rule 814(b)(3) would require a SB SEF to have the capacity to carry out such international information-sharing agreements as the Commission may require. If so directed by the Commission, a SB SEF could be required to carry out one or more international-information sharing agreements. It is difficult to estimate how many international information-sharing agreements the Commission may direct a SB SEF to carry out or what the reporting requirements under such agreements may be.

The Commission estimates, for PRA purposes only, that SB SEFs would need to carry out such an agreement, on average, once per year. The Commission further estimates that each such agreement could require 40 hours per respondent to prepare, review and finalize. The Commission therefore preliminarily estimates that the paperwork burden for SB SEFs associated with having the capacity to carry out international information-sharing agreements as the Commission may require pursuant to proposed Rule 814(b)(3) would be 800 hours.[471] The Commission believes that these agreements initially would be created or reviewed internally, but also reviewed by outside counsel. The Commission estimates that the SB SEF's outside counsel would require 10 hours to review these documents for a cost of $4,000 per respondent, and a total cost of $80,000 for all respondents.[472] The Commission solicits comment as to the accuracy of these estimates.

In addition, the Commission preliminarily estimates that a SB SEF would be required to provide information pursuant to an international information-sharing agreement a total of twice per year and that, similar to complying with a Commission request for information pursuant to other provisions of proposed Rule 814, it would require 25 hours per response to comply with a request for information, for a total annual burden of 50 hours per year per SB SEF. The Commission believes that this work, should it be required, would be conducted internally. The Commission therefore estimates that aggregate annual paperwork burden on SB SEFs associated with reporting under international information-sharing agreements entered into under proposed

[463] This burden estimate does not include the burden that would be incurred by a SB SEF in connection with submitting rule filings in connection with new rules or rule amendments to the Commission, which burden would be included in the burden for proposed Rules 805 and 806 discussed in the sections of this PRA relating to the rule filing processes for SB SEFs.

[464] 120 hours = 10 hours (monthly burden) × 12 (months per year).

[465] 2,400 hours = 20 (number of SB SEF respondents) × 120 hours (annual burden to update rules, policies and procedures required by proposed Regulation SB SEF).

[466] *See supra* note 429.

[467] The estimate of 4 annual requests assumes that each SB SEF participant would receive, on average, one request for information per calendar quarter.

[468] 100 hours = 4 (number of requests annually) × 25 (annual hourly burden for each participant to comply with SB SEF rules imposed pursuant to proposed Rule 814(a)).

[469] 27,500 hours = 4 (total number of annual requests made of a SB SEF participant directly or indirectly) × 25 (hours per respondent) × 275 (number of SB SEF participants required to comply with proposed rules imposed by a SB SEF pursuant to proposed Rule 814(a)).

[470] 1,000 hours = 50 (annual hourly burden to comply with proposed Rule 814(b)(2)) × 20 (number of SB SEF respondents).

[471] 800 hours = 40 (annual hourly burden to enter into an international information-sharing agreement pursuant to proposed Rule 814(b)(3) × 20 (number of SB SEF respondents). The Commission believes there would be no separate initial burden.

[472] These figures are based on an hourly cost of outside counsel at $400. *See* Municipal Securities Disclosure Release, *supra* note 438.

Rule 814(b)(3) would be 1,000 hours.[473] The Commission solicits comment as to the accuracy of these estimates.

The Commission therefore estimates the aggregate annual paperwork burden associated with proposed Rule 814 to be 27,500 hours for SB SEF participant respondents and 2,800[474] hours and $80,000 for SB SEF respondents.

Proposed Rule 816: Proposed Rule 816 would require a SB SEF to notify the Commission of any exercise of its emergency authority, and within two weeks following cessation of an emergency, submit to the Commission a report explaining the basis for declaring an emergency, how conflicts of interest were minimized, and the extent to which the SB SEF considered the effect of its emergency action on the markets for the SB swap and any security or securities underlying the SB swap. The collection of information associated with proposed Rule 816 would apply only during and following an emergency.[475]

The Commission notes that emergencies in the securities markets are rare, but when they do occur, they require significant time and resources to address. For PRA purposes only, the Commission estimates that a SB SEF would exercise its emergency authority once per year. Based on its experience with national securities exchanges, the Commission estimates that the time that would be necessary for a SB SEF to prepare and transmit the notice and report regarding emergency authority pursuant to proposed Rule 816 would be 40 hours per respondent. Thus, the Commission estimates that the total annual reporting burden associated with proposed Rule 816 would be 800 hours.[476] The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment on these estimates.

Proposed Rule 818: Proposed Rule 818(e) would require a SB SEF to report to the Commission such information as the Commission may, from time to time, determine to be necessary to perform the duties of the Commission. For PRA purposes only, the Commission estimates that the Commission may request such information from a SB SEF once each year. For PRA purposes only, the Commission estimates that any request for information would be information easily accessible to the SB SEF, but could require an analysis of such information by the SB SEF. Based on the Commission's experience with information requested of other registered entities, the Commission preliminarily estimates that each request pursuant to proposed Rule 818 would require 20 hours to collect, review, draft any accompanying analysis or report, and transmit, which would result in an annual hourly burden of 20 hours per SB SEF respondent. Thus, the Commission estimates that the aggregate annual reporting burden on SB SEFs associated with proposed Rule 818(e) would be 400 hours.[477] The Commission solicits comment on these estimates.

Proposed Rule 818(f) would require a SB SEF to provide to any representative of the Commission, upon request, copies of documents required to be kept and preserved pursuant to the recordkeeping requirements of proposed Rule 818. For PRA purposes only, the Commission preliminarily estimates that it would request information or documents under proposed Rule 818(f) twice per year and would require no more than 25 hours per response to compile and transmit, resulting in an annual hourly burden of 50 hours per SB SEF respondent.[478] The Commission therefore estimates the annual aggregate paperwork burden associated with proposed Rule 818(f) would be 1,000 hours.[479] The Commission solicits comment on these estimates.

The Commission therefore estimates the total annual reporting burden on SB SEFs associated with proposed Rule 818 would be 1,400 hours.[480]

Proposed Rule 822: Proposed Rule 822(a)(2) would require a SB SEF to submit to the Commission an annual objective review of the capability of SB SEF systems that support or are integrally related to the performance of the SB SEF's activities. If the objective review is performed by an internal department, an objective, external firm would be required to assess the internal department's objectivity, competency, and work performance. Based on its experience with its ARP program, the Commission believes that the annual burden per respondent of conducting an internal audit would be approximately 625 hours.[481] Further, the Commission's experience with the ARP program has indicated that an additional 200 hours per respondent per year would be required on average to oversee and establish the independent review of these audits. [482] Thus, the Commission estimates the aggregate annual burden on SB SEFs to comply with requirement to submit these reports would be 16,500 hours.[483] In addition, based on its experience with the ARP program,[484] the Commission estimates that the annual cost to hire an objective, external firm to be approximately $90,000 per respondent annually. For this reason, the Commission estimates the total annual cost of hiring an objective, external firm to review internal audits as $1,800,000 for all respondents.[485] The Commission solicits comment as to the accuracy of this information.

In addition, proposed Rule 822(a)(3) would require a SB SEF to promptly notify the Commission in writing of material systems outages and submit to the Commission within five business days of when the outage occurred a written description and analysis of the outage and any remedial measures that have been implemented or are

[473] 1,000 hours = 50 (annual hourly burden to comply with reporting requirements pursuant to international information-sharing agreements × 20 (number of SB SEF respondents).

[474] 2,800 hours = 1,000 (aggregate burden on SB SEF respondents to comply with proposed Rule 814(b)(2)) + 1,800 hours (aggregate burden on SB SEF respondent to comply with proposed Rule 814(b)(3)).

[475] Proposed Rule 816(d)(2) provides that if a SB SEF implements any rule or rule amendment in the exercise of its emergency authority, it must file such rule or rule amendment with the Commission pursuant to proposed Rule 806 prior to the implementation of such rule or rule amendment, or, if not practicable, within 24 hours after implementation of such rule or rule amendment. The annual hourly burden to comply with proposed Rule 816(d)(2) is included in the estimated annual hourly burden for a SB SEF to comply with proposed Rule 806.

[476] 800 hours = 40 (annual hourly burden to comply with proposed Rule 816) × 20 (number of SB SEF respondents).

[477] 400 hours = 20 (annual hourly burden to comply with proposed Rule 818(e)) × 20 (number of SB SEF respondents). The Commission believes there would be no separate initial burden.

[478] Based on its experience in requesting information from exchanges for a variety of purposes, the Commission estimates that it would require an average of 25 hours per response for a SB SEF to compile and transmit documents and information requested by the Commission.

[479] 1,000 hours = 25 (annual hourly burden to comply with proposed Rule 818(f)) × 20 (number of SB SEF respondents).

[480] 1,400 hours = 400 (hourly burden to comply with proposed Rule 818(e)) + 1,000 (hourly burden to comply with proposed Rule 818(f)).

[481] *See* SDR Release, *supra* note 6.

[482] *Id.*

[483] 16,500 hours = 825 (annual hourly burden to comply proposed Rule 822(a)(2)) × 20 (number of SB SEF respondents).

[484] Under the Commission's ARP inspection program of SROs and certain ATSs, the Commission staff conducts on-site inspections and attends periodic technology briefings presented by SRO and ATS staff for the Commission's ARP staff, which generally covers systems capacity and testing, review of system vulnerability, review of planned system development, and business continuity planning. Under the ARP inspection program, the Commission staff also monitors system failures and planned system changes on a daily basis.

[485] $1,800,000 = $90,000 (annual external dollar cost per respondent to comply with proposed Rule 822(a)(2)) × 20 (number of SB SEF respondents).

contemplated. The Commission estimates, based on its experience with the ARP program, that the burden imposed by these requirements would be 15.4 hours on average per respondent per year, for a total estimated burden of 308 hours per year for all respondents.[486] The Commission believes that this work would be conducted internally. The Commission solicits comments as to the accuracy of this estimate.

Proposed Rule 822(a)(4) would require a SB SEF to notify the Commission in writing at least thirty calendar days before implementation of any planned material systems changes. The Commission estimates that there would be an average of 60 such events per respondent per year.[487] Based on the Commission's experience with the ARP program, the Commission estimates that each of these notices would require an average of 2 hours for a total burden for all respondents of 2,400 hours annually.[488] The Commission believes that this work would be conducted internally. The Commission solicits comments as to the accuracy of this estimate.

The Commission therefore preliminarily estimates that the total annual hourly reporting burden associated with proposed Rule 822 would be 19,208 hours [489] and $1,800,000.[490]

The Commission preliminarily estimates that the total annual hourly burden for all SB SEFs combined for reporting would be 24,208 hours.[491] There is no one time initial hourly burden associated with the proposed reporting requirements. The Commission preliminarily estimates that the total annual cost burden for all SB SEFs combined for reporting would be $1,880,000.[492] In addition, the Commission preliminarily estimates that the total annual hourly burden on all SB SEF participants for reporting under proposed Regulation SB SEF would be 28,000 hours.

4. Recordkeeping Required Under Regulation SB SEF

The annual recordkeeping requirements that are contained in proposed Rules 818(a) and (b) are similar to the requirements that apply to SROs pursuant to Rules 17a–1(a) and (b) under the Exchange Act.[493] The Commission currently estimates that an SRO, including a national securities exchange, would expend approximately 50 hours per year to comply with the collection of information requirement of Rule 17a–1.[494] Based on the Commission's experience with Rule 17a–1(a) and (b), the Commission believes that 50 hours would be an appropriate estimate for the hourly burden that would apply to SB SEFs to comply with proposed Rule 818(a) and (b). The Commission notes that SB SEFs generally would be electronic platforms and that the vast preponderance of its records thus should be retained electronically in the ordinary course of its business. Therefore, the Commission preliminarily estimates that it would take a SB SEF approximately 50 hours annually to comply with proposed Rule 818(a) and (b) for an aggregate annual burden of 1,000 hours.[495] This estimated amount includes, but is not limited to, the annual hourly burden to generate, collect, organize and preserve all of the documents and other records required under proposed Rule 818(a) and (b). The Commission requests comment on the accuracy of this estimate.

In addition, proposed Rule 818(c) would require a SB SEF to keep certain records with respect to trading activity on and through the SB SEF. Specifically, a SB SEF would be required to make and keep accurate, time-sequenced records of all trading interest and transactions that are received by, originated on, or executed on the SB SEF. This recordkeeping rule is similar to the audit trail requirement that applies to ATSs pursuant to Rule 302 of Regulation ATS under the Exchange Act.[496] The Commission currently estimates that an ATS would expend approximately 130 hours per year to comply with the collection of information requirements of Rule 302 of Regulation ATS. Based on the Commission's experience with Rule 302 of Regulation ATS, which contains the requirement that an ATS make and keep records necessary to create a meaningful audit trail, the Commission preliminarily estimates that the annual hourly paperwork burden for a SB SEF to comply with proposed Rule 818(c) would be approximately 130 hours, which would result in an aggregate annual burden of 2,600 hours.[497] The Commission requests comment on the accuracy of this estimate.

The Commission preliminarily believes that the records that a SB SEF would have to keep and preserve to comply with proposed Rule 818 would be the same records that a SB SEF would already have to keep and preserve in the ordinary course of its business. A SB SEF would be required to keep and preserve these records to, among other things, pay taxes, defend against legal actions, resolve conflicts between participants, and generally to ensure the smooth functioning of the SB SEF's business operations. Therefore, the Commission preliminarily believes that, while there would be a collection of information required by proposed

[486] 308 hours = 15.4 annual hourly burden per respondent to comply proposed Rule 822(a)(3)) × 20 (number of SB SEF respondents). This annual hourly burden comports with the Commission's estimate for similar proposed requirements to be imposed on SDRs to comply with similar proposed requirements. *See* SDR Release, *supra* note 6.

[487] This estimate would account for any weekly maintenance that would meet the standard of a "material systems change," as well as for any software upgrades, throughout the year, that would meet such standard.

[488] 2,400 hours = 60 (notices per SB SEF) × 2 (annual hourly burden per notice) × 20 (number of SB SEF respondents). *See* SDR Release, *supra* note 6.

[489] 19,208 hours = 16,500 (annual hourly burden to comply with proposed Rule 822(a)(2)) + 308 (annual hourly burden to comply with proposed Rule 822(a)(3)) + 2,400 (annual hourly burden to comply with proposed Rule 822(a)(4)).

[490] *See supra* note 485.

[491] 24,208 = 2,800 (annual hourly burden to comply with proposed Rule 814) + 800 (annual hourly burden to comply with proposed Rule 816) + 1,400 (annual hourly burden to comply with proposed Rule 818) + 19,208 (annual hourly burden to comply with proposed Rule 822).

[492] $1,880,000 = $80,000 (annual cost burden to comply with proposed Rule 814(b)(3)) + $1,800,000 (annual cost burden to comply with proposed Rule 822(a)(2)).

[493] 17 CFR 240.17a–1(a) and (b). In addition, proposed Rule 811(b)(3) would require that a SB SEF make and keep records relating to all grants and denials of access to the SB SEF and proposed Rule 811(g) would require a SB SEF to make and keep records relating to all disciplinary proceedings. The records required by proposed Rules 811(b)(3) and 811(g) would be included in the business records required to be kept pursuant to proposed Rule 818. Therefore, the Commission preliminarily believes that the paperwork burden for these rules would be included in the estimated burden for proposed Rule 818. *See supra* note 417 and accompanying text.

[494] Rule 17a–1 also states generally that SROs shall, upon the request of any representative of the Commission, promptly furnish copies of documents required to be kept and preserved under the rule. *See* 17 CFR. 240.17a–1. The Commission's estimated burden of 50 hours per respondent reflects compliance with all of the recordkeeping provisions of this rule. *See* 2010 Extension of Rule 17a–1 Supporting Statement, Office of Management and Budget, available at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201007-3235-003.*

[495] 1,000 hours = 20 (number of SB SEF respondents) x 50 hours (annual hourly burden to comply with proposed Rule 818(a) and (b)).

[496] Rule 302 of Regulation ATS under the Exchange Act generally requires an ATS to keep a record of subscribers, daily summaries of trading and time sequenced records of order information in the ATS. *See* 17 CFR 242.302. The Commission's estimated burden of 130 hours per respondent reflects compliance with all of the recordkeeping provisions of this rule. *See* 2010 Extension of Rule 302 Supporting Statement, Office of Management and Budget, available at *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201006-3235-008.*

[497] 2,600 hours = 20 (number of SB SEF respondents) x 130 hours (annual hourly burden to comply with proposed Rule 818(c)).

Rule 818 related to recordkeeping, there would not be a paperwork burden for PRA purposes associated with the SB SEF's complying with proposed Rule 818 aside from establishing or modifying recordkeeping systems as noted below, because these records would be maintained in the ordinary course of its business.[498]

For purposes of the PRA, however, the Commission preliminarily estimates that a SB SEF could incur a one-time burden to set up or modify an existing recordkeeping system to comply with the proposed Rule 818. Based on the Commission's experience with recordkeeping costs and consistent with prior burden estimates for similar recordkeeping provisions,[499] the Commission estimates that setting up or modifying a recordkeeping system would create an initial burden of 345 hours [500] and $1,800 in information technology costs per respondent to purchase recordkeeping software,[501] for a total initial burden of 6,900 hours [502] and $36,000.[503] The Commission requests comment on the accuracy of this estimate.

Additionally, the Commission preliminarily estimates that each SB SEF may have a one-time burden to upgrade its existing systems to ensure that the audit trail component of their systems complies with proposed Rule 818(c). Based on industry sources, the Commission preliminarily believes that this work would be done internally by two programmers over the course of approximately four weeks. Therefore, the Commission preliminarily estimates that it would take a total of 320 hours for a SB SEF to upgrade its existing systems for an aggregate one-time hourly burden of 6,400 hours.[504]

Therefore, the Commission preliminarily believes that the total aggregate annual hourly burden for 20 SB SEFs to comply with proposed Rule 818(a) through (c) would be approximately 3,600 hours.[505] The total one time hourly burden for 20 SB SEFs to comply with proposed Rule 818 would be approximately 13,300 hours [506] and $36,000. The Commission requests comment on the accuracy of this estimate.

As discussed above, proposed Rule 813(c)(1) would require a SB SEF to establish rules requiring any participant that enters any trading interest or executes any transaction on the SB SEF to maintain books and records of any such trading interest or transaction and of any position in any security-based swap that is the result of any such trading interest or transaction. The Commission preliminarily believes that proposed Rule 813(c)(1) could impose a collection of information burden on some SB SEF participants.[507] However, the Commission also preliminarily believes that the records that many SB SEF participants would have to maintain pursuant to proposed Rule 813(c)(1) would be the same records that these participants would have to maintain under other Commission recordkeeping provisions to the extent they are regulated entities or in the ordinary course of their business.[508] Therefore, the Commission preliminarily believes that the paperwork burden for a number of SB SEF participants is either already encompassed in the collection of information for other recordkeeping obligations that they must comply with or would not be required to be calculated for purposes of this PRA analysis because such burden relates to the maintenance of records that are usually or customarily maintained.[509]

However, the Commission believes that proposed Rule 813(c)(1) could impose a new obligation to maintain books and records on those ECPs that would become participants of the SB SEF. For PRA purposes the Commission believes that it is appropriate to estimate that all 210 ECPs would be subject to the collection of information requirement of proposed Rule 813(c)(1).[510] Based on the Commission's experience with similar recordkeeping rules,[511] the Commission preliminarily estimates that it would take each ECP that is a SB SEF participant approximately 40 hours on an annual basis to comply with the collection of information requirement of proposed Rule 813(c)(1) for a total annual burden for all ECP respondents combined of 8,400 hours.[512] The Commission requests comment on the accuracy of this estimate.

For purposes of the PRA, the Commission also preliminarily estimates that ECPs that would be SB SEF participants could incur a one-time burden to set up or modify an existing recordkeeping system to comply with the proposed Rule 813(c)(1). Based on the Commission's experience with recordkeeping costs and consistent with prior burden estimates for similar recordkeeping provisions,[513] the Commission estimates that setting up or modifying a recordkeeping system would create an initial burden of 345 hours [514] and $1,800 in information technology costs per ECP to purchase

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[498] *See* 5 CFR 1320.3(b)(2). This section generally provides that the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) are excluded from the definition of "burden" in the PRA if they are usual and customary.

[499] *See* Securities Exchange Act Release No. 59342 (February 2, 2009); 74 FR 6456 (February 9, 2009) (Amendments to Rules for Nationally Recognized Statistical Rating Organizations) ("NRSRO Adopting Release").

[500] *See* NRSRO Adopting Release, *supra* note 499, 74 FR at 6472, n. 154 (estimated average one-time hourly burden of 345 hours for each nationally recognized statistical ratings organization ("NRSRO") to implement a recordkeeping system to comply with Rule 17g–2 under the Exchange Act, 17 CFR 240.17g–2).

[501] *See* NRSRO Adopting Release, *id.,* 74 FR at 6472 (estimated average cost of $1,800 for each NRSRO to purchase recordkeeping software).

[502] 6,900 hours = 345 hours (estimated hourly burden for each SB SEF to implement a recordkeeping system) × 20 (number of SB SEF respondents).

[503] $36,000 = $1,800 (estimated cost to purchase recordkeeping software) × 20 (number of SB SEF respondents).

[504] 6,400 hours = 320 hours (estimated one-time hourly burden for two senior programmers working 40 hours per week for four weeks at each SB SEF to upgrade systems to comply with proposed Rule 818(c)) × 20 (number of SB SEF respondents).

[505] 3,600 hours = 1,000 hours (estimated annual hourly burden to comply with proposed Rule 818(a) and (b)) + 2,600 hours (estimated annual hourly burden to comply with proposed Rule 818(c)).

[506] 13,300 hours = 6,900 hours (total estimated one-time hourly burden for all SB SEF respondents combined to set-up or modify recordkeeping software to comply with proposed Rule 818) + 6,400 hours (total estimated one-time hourly burden for all SB SEF respondents combined to modify existing systems to comply with audit trail requirements of proposed Rule 818(c)).

[507] The Commission also notes that proposed 809(c)(2)(i) would require non-registered ECPs to meet the recordkeeping and reporting requirements established by the SB SEF pursuant to proposed Rule 813. The collection of information associated with 809(c)(2)(i) is encompassed in the burden estimates for the collection of information associated with proposed Rule 813.

[508] Section 764 of the Dodd-Frank Act requires the Commission to adopt rules governing reporting and recordkeeping for SB swap dealers and major SB swap participants. *See* Public Law 111–203, § 764. The Commission is proposing reporting and recordkeeping rules for SB swap dealers and major SB swap participants as part of a separate Commission rulemaking. *See also, e.g.,* Rules 17a–3 (records to be made by certain exchange members, brokers and dealers) and 17a–4 (records to be preserved by certain exchange members, brokers and dealers) under the Exchange Act, 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[509] *See* 5 CFR 1320.3(b)(2).

[510] *See supra* note 429 and accompanying text.

[511] *See, e.g.,* 17 CFR 240.17a–3 and 17 CFR 240.17a–4.

[512] 8,400 hours = 210 (estimated number of ECPs that could be subject to the collection of information under proposed Rule 813(c)(1)) × 40 hours (estimated annual burden for each ECPs to comply with the collection of information under proposed Rule 813(c)(1)).

[513] *See* NRSRO Adopting Release *supra* note 499.

[514] *See* NRSRO Adopting Release, *supra* note 499, 74 FR at 6472, n. 154 (estimated average one-time hourly burden of 345 hours for each NRSRO to implement a recordkeeping system to comply with Rule 17g–2 under the Exchange Act).

recordkeeping software,[515] for a total initial burden of 72,450 hours[516] and $378,000 for all ECPs combined.[517] The Commission requests comment on the accuracy of this estimate.

5. Timely Publication of Trading Information Requirement for SB SEFs

Proposed Rule 817(a) would require a SB SEF to: (1) have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF; and (2) make public timely information on price, trading volume, and other trading data on SB swaps to the extent required by the Commission. The Commission notes that proposed Rule 817(a)(1) would incorporate Section 3D(d)(8) of the Exchange Act but would not otherwise require a SB SEF to report SB swap transactions to a registered SDR or make public timely information on price, trading volume, and other trading data on SB swaps. Rather, the Commission has proposed that other parties be responsible for reporting of SB swap transactions to a registered SDR and for the public dissemination of certain SB swap transaction information.[518]

However, because proposed Rule 817(a) would require a SB SEF to have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF so that it could make such information public if required, the Commission preliminarily believes that each SB SEF could have a one-time hourly burden to modify its systems so that they have this functionality.[519] The Commission believes that for a SB SEF to ensure it has the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF, as required by Section 3D(d)(8) and as proposed to be incorporated in proposed Rule 817(a), a SB SEF would need two computer programmers, each working four weeks. This would result in a one-time hourly burden of 320 hours[520] per SB SEF respondent, for a total annual burden on all SB SEFs of 6,400 hours.[521] The Commission solicits comment on the accuracy of these estimates.

6. Rule Filing and Product Filing Processes for SB SEFs

Under proposed Rules 805 and 806, a SB SEF would be required to submit rule filings for new rules or rule amendments, including changes to a product's terms or conditions. As noted above, the Commission estimates a total of 20 SB SEF respondents for this requirement. The proposed rules are modeled on the rule filing and product filing processes proposed by the CFTC.[522] Based on the Commission staff's consultation with CFTC staff,[523] the Commission estimates that on average these requirements would require 2.5 hours of work per rule filing, with an estimated average of 60 responses per year per respondent. This would result in a total estimated burden of 150 hours per respondent[524] and 3,000 hours for all the respondents annually.[525] Based on the Commission staff's consultation with CFTC staff, the Commission believes that the SB SEF would handle the rule filing process internally. The Commission solicits comments regarding the accuracy of its estimates.

Under proposed Rules 807 and 808, a SB SEF would be required to submit filings for new products that it makes available for trading. As outlined above, the Commission estimates a total of 20 SB SEF respondents for this requirement. Based on the Commission staff's consultation with CFTC staff,[526] the Commission estimates that on average these requirements would require 2.5 hours of work per product filing, with an estimated average of 34 responses per year per respondent. The Commission estimates that this would result in a total burden of 85 hours per respondent[527] and 1,700 hours for all the respondents annually.[528] Based on the Commission staff's consultation with the CFTC staff, the Commission believes that the SB SEF would handle product filings internally. The Commission solicits comments regarding the accuracy of its estimates.

The Commission preliminarily estimates that the total annual hourly burden for all SB SEFs to prepare and submit rule filings under proposed Rules 805 and 806 would be 3,000 hours. The Commission preliminarily estimates that the total annual hourly burden for all SB SEFs to prepare and submit product filings under proposed Rules 807 and 808 would be 1,700 hours.

7. Requirements Relating to the SB SEF's CCO

The SB SEF's CCO would have several initial and annual paperwork burdens under proposed Rule 823(b)(6) and (7) and also under proposed Rule 823(c) through (e).

Under proposed Rule 823(b)(6) and (7), the CCO would be responsible for: (1) Establishing procedures for the remediation of noncompliance issues identified by the CCO identified through any compliance office review, look-back, internal or external audit finding, self-reported error or validated complaint, and (2) establishing appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues. As noted above, the Commission estimates a total of 20 respondents for this requirement. Based on the Commission's paperwork burden estimates for compliance program rules adopted under the Investment Company Act of 1940 ("ICA") and the Investment Advisers Act of 1940,[529] the

[515] *See* NRSRO Adopting Release, *supra* note 499, 74 FR at 6472 (estimated average cost of $1,800 for each NRSRO to purchase recordkeeping software).

[516] 72,450 hours = 345 hours (estimated hourly burden for each SB SEF participant to implement a recordkeeping system) × 210 (estimated number of ECP SB SEF participants that could seek to set up or modify a recordkeeping system to comply with proposed Rule 813(c)(1)).

[517] $378,000 = $1,800 (estimated cost to purchase recordkeeping software) × 210 (estimated number of ECP SB SEFs that could seek to purchase recordkeeping software to comply with proposed Rule 813(c)(1)).

[518] *See* Reporting and Dissemination Release *supra* note 6.

[519] The Commission believes that a SB SEF would seek to ensure that it has the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through its facilities in the ordinary course of its business. Therefore the Commission is not including the one-time burden of developing and implementing systems having the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF in its paperwork burden estimate for proposed Rule 817(a). *See* 5 CFR 1320.3(b)(2).

[520] 320 hours = 2 (number of senior programmers) × 40 (hours in a standard full-time work week) × 4 (number of weeks required).

[521] 6,400 hours = 320 (estimated one-time hourly burden per SB SEF respondent pursuant to proposed Rule 817(a)) × 20 (number of SB SEF respondents).

[522] *See* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.2–40.5).

[523] *See id.*

[524] 150 hours = 60 (number of responses per year per respondent) × 2.5 hours (burden per response).

[525] 3,000 hours = 150 hours (annual burden per respondent pursuant to proposed Rules 805 and 806) × 20 (number of respondents).

[526] *See* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.2–40.5).

[527] 85 hours = 34 (number of responses per year per respondent) × 2.5 hours (burden per response).

[528] 1,700 hours = 85 hours (annual burden per respondent pursuant to proposed Rules 807 and 808) × 20 (number of SB SEF respondents).

[529] Rule 38a–1 under the ICA (17 CFR 270.38a–1) requires each registered investment company and business development company to adopt and implement policies and procedures reasonably designed to prevent violations of the Federal securities laws. *See* Investment Company Act

Continued

Commission estimates that, on average, the requirements of proposed Rule 823(b)(6) and (7) would mean that each SB SEF would expend 160 hours initially [530] to create the required two policies and procedures, for a total estimated burden for all respondents of 3,200 hours initially.[531] Also, due to the novel nature of the CCO requirements in the SB SEF industry and the new requirements under the Dodd-Frank Act, the Commission estimates that an initial one-time burden of $40,000 in outside legal costs [532] would be incurred per respondent, for a total outside cost burden for all respondents of $800,000.[533] The Commission solicits comments regarding the accuracy of these estimates.

A CCO also would be required under proposed Rule 823(c) and (d) to prepare and submit an annual compliance report to the Commission and to the SB SEF's Board. Based upon the Commission's estimates for similar annual reviews and reports by CCOs of investment companies, the Commission estimates that these reports would require an average of 92 hours per respondent per year.[534] Thus, the Commission estimates a total annual burden of 1,840 hours for all respondents.[535] Because the report would be submitted by the CCO, the Commission does not expect that the SB SEF would incur any external costs. The Commission solicits comments on the accuracy of its estimates.

A CCO would be required under proposed Rule 823(e)(1) and (2) and Exhibits F and H to proposed Form SB SEF to submit an annual financial report that would need to satisfy a number of requirements, including the requirement that a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01) audit each financial report relating to the SB SEF (unaudited for certain affiliated entities). Based on conversations with operators of current trading platforms and the Commission's experience with entities of similar size, the Commission preliminarily estimates that the reports relating to the SB SEF generally would require, on average, 500 hours per respondent to complete and cost $500,000 for independent public accounting services per respondent. The Commission believes that the unaudited reports required for certain affiliated entities and available upon request by the Commission for other affiliated entities would not be overly time consuming to produce because, based on the Commission's experience with Form 1 filers, a respondent's accounting system should have this information available. Furthermore, because the information would not have to be audited, a respondent would only have to compile the information using a computer and commercially available software that it generally would own for pre-existing accounting purposes and then submit the information to the Commission. Based on the number of unaudited financial statements that the Commission receives from filers of Form 1 and the substance in these reports, the Commission estimates that it would take a SB SEF 40 hours to compile, review, and submit these reports. However, all of these reports would need to be provided in XBRL, as required in Rules 405(a)(1), (a)(3), (b), (c), (d) and (e) of Regulation S–T.[536] This would create an additional burden on respondents. The Commission preliminarily estimates that, based on its experience with other data tagging initiatives, these requirements would add an additional burden of an average of 54 hours and $23,000 in outside software and other costs per respondent per year. Thus, for purposes of complying with the financial statement requirements under proposed Rule 823(e)(1) and (2) and Exhibits F and H to proposed Form SB SEF, the Commission estimates a total annual burden of 11,880 hours [537] and $10,460,000 for respondents.[538] The Commission solicits comments as to the accuracy of this information.

As a result, the Commission estimates that the total burdens for compliance with proposed Rule 823 would be: (1) Initially, for the creation of the policies and procedures required in proposed Rule 823(b)(6) and (7), 160 hours and $40,000, per respondent, and 3,200 hours and $800,000, for all respondents; and (2) on an annual basis, for the annual compliance report and financial reports required under proposed Rule 823(c) through (e), 686 hours [539] and $523,000, per respondent, and 13,720 [540] hours and $10,460,000,[541] for all respondents.

The Commission preliminarily estimates that the total annual hourly burden for all SB SEFs combined for the CCO requirements in proposed Rule 823 would be 13,720 hours and the total one-time hourly burden would be 3,200. The Commission preliminarily estimates that the total annual cost burden for all SB SEFs to comply with the CCO requirements in proposed Rule 823 would be $10,460,000 and the total one-time cost burden would be $800,000.

8. Surveillance Systems Requirements for SB SEFs

As discussed above, proposed Rule 813(b) requires SB SEFs to have the capacity and resources to electronically monitor trading in SB swaps on its market by establishing an automated surveillance system, including through real-time monitoring of trading and use of automated alerts, to, among other things, detect and deter fraudulent or manipulative acts or practices, detect

Release No. IC–26299 (December 17, 2003); 68 FR 74714 (December 24, 2003) (adopting release) and *see* 2010 Extension of Rule 38a–1 Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201002-3235-028* ("ICA PRA"). The ICA PRA estimates a burden of 80 hours initially for the creation of such policies and procedures.

[530] 160 hours = 80 hours (burden per policy and procedure requirement) × 2 (number of policy and procedure requirements).

[531] 3,200 hours = 160 hours (initial burden per respondent) × 20 (number of SB SEF respondents).

[532] $40,000 = $400 (estimated hourly cost for outside counsel) × 50 hours (estimated amount of external legal work require per policy and procedure requirement) × 2 (number of policy and procedure requirements). The estimate of 50 hours of external legal work is from the Commission's estimate for external legal costs for complying with the requirements of Rule 611 of Regulation NMS for establishing polices and procedures thereunder. *See* Securities Exchange Act Release No. 51808 (June 9, 2005); 70 FR 37496 (June 29, 2005). *See also* 2008 Extension of Rule 611, Supporting Statement, Office of Management and Budget, available at: *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200802-3235-021*. The Commission preliminarily estimates an hourly cost of outside counsel at $400. *See* Municipal Securities Disclosure Release, *supra* note 438.

[533] $800,000 = $40,000 (initial burden per respondent) × 20 (number of SB SEF respondents).

[534] The ICA PRA estimated that CCOs of investment companies would expend 42 hours annually to conduct the annual review and prepare the annual compliance report under Rule 38a–1 under the ICA. *See* ICA PRA *supra* note 529. Because proposed Rule 823 would require slightly more than double the information that is required for CCO annual reports under Rule 38a–1, the Commission preliminarily estimates that the burden associated with the CCO's annual compliance report requirements of proposed Rule 823(c) and (d) would be 220% that of Rule 38a–1, which estimate would be approximately 92 hours.

[535] 1,840 hours = 92 hours (annual burden per respondent) × 20 (number of SB SEF respondents).

[536] *See* 17 CFR 232.405.

[537] 11,880 hours = 20 (number of SB SEF respondents) × 594 hours (500 hours for audited SB SEF financial statements + 40 hours for unaudited financial statements of affiliated entities + 54 hours for XBRL formatting of submission).s

[538] $10,460,000 = 20 (number of SB SEF respondents) × $523,000 ($500,000 for outside accounting services for auditing SB SEF's financial statements + $23,000 in outside software and other cost for formatting financial statement submission in XBRL format).

[539] 686 hours = 594 hours for financial report + 92 hours for annual compliance report.

[540] 13,720 hours = 686 hours (burden per respondent) × 20 (number of SB SEF respondents).

[541] $10,460,000 = 20 (number of SB SEF respondents) × $523,000 ($500,000 for outside accounting services for auditing SB SEF's financial statements + $23,000 in outside software and other cost for formatting financial statement submission in XBRL format).

and deter market distortions or disruptions of trading, conduct real-time monitoring of trading to provide for comprehensive and accurate trade reconstruction, and collect and assess data to allow SB SEFs to respond to market abuses and disruptions.[542]

Based on industry sources, the Commission preliminarily estimates that establishing an automated surveillance system would require one senior programmer and three additional programmers working for a year to create and implement such a system. Assuming a 1,800 hour work year, the Commission preliminarily estimates that the average one-time initial burden per respondent of establishing an automated surveillance system compliant with these requirements, would be 7,200 hours.[543] In addition, the Commission believes that a one-time capital expenditure of $1,500,000 in information technology costs would be necessary to establish such a system. This estimate is based on the Commission's discussions with market participants currently operating platforms that trade OTC swaps. Based on the estimated number of 20 SB SEF respondents, the Commission estimates a total start-up cost of 144,000 hours [544] and $30,000,000 in information technology costs.[545] Based on discussions with operators of current trading platforms, the Commission further estimates that to maintain these systems, a SB SEF would have to employ two programmer/analysts. Therefore, assuming a 1,800 hour work year, the Commission preliminarily estimates the average ongoing annual costs of these systems to be 3,600 hours per respondent [546] for a total of 72,000 hours for all respondents.[547] In addition, the Commission estimates that these systems may incur an ongoing information technology cost of and $500,000 per respondent, for a total ongoing annual burden of $10,000,000[548] The Commission solicits comments on the accuracy of its estimates.

9. Access by Non-Registered Eligible Contract Participants

As discussed above, proposed Rule 809(d)(1) would require a SB SEF that permits non-registered ECPs to be participants in the SB SEF to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.[549] Proposed Rule 809(d)(2) would require that the risk management controls and supervisory procedures for granting access to certain ECPs as participants of the SB SEF be reasonably designed to ensure compliance with all regulatory requirements.[550] The Commission notes that proposed Rule 809(d) is modeled on recently adopted Rule 15c3–5 under Exchange Act.[551] The PRA analysis prepared in connection with that rule has informed the Commission's estimates of the paperwork burdens that would apply to SB SEFS under the proposed Rule 809(d).[552] Although the Commission reviewed the burden estimates it prepared in connection with Rule 15c3–5 to inform its burden estimates of the proposed Rule 809(d), the Commission recognizes that a number of entities that seek to become SB SEFs may not currently be regulated entities.

The Commission preliminarily believes that proposed Rule 809(d)(1) and (2) would impose a one-time collection of information burden on SB SEFs to establish or modify risk management systems, if they permit access by non-registered ECPs. The Commission preliminarily believes that the majority of entities that would seek to become SB SEFs would already have some risk management systems and supervisory procedures and controls to protect the integrity of their business and to comply with other requirements already specified, analyzed and accounted for herein (*e.g.,* requirements relating to surveillance systems, recordkeeping, reporting, and the CCO). However, some entities that seek to become SB SEFs could have to change their systems and procedures and other entities that currently do not have such systems and procedures could have to establish new systems and procedures to comply with the requirement of proposed Rule 809(d).

The Commission preliminarily believes that each SB SEF would have a one-time burden to establish or modify its technology and systems to add the controls necessary to comply with the requirement of the proposed Rule 809(d). The Commission estimates that each SB SEF would spend an average of 225 hours to develop or modify their systems to bring them into compliance with the proposed rule for a total one-time burden for all SB SEFs combined of 4,500 hours.[553] Based on industry sources, the Commission preliminarily believes that the development or modification of the required technology and systems would be performed internally.

The Commission also preliminarily believes that proposed Rules 809(d)(1) and (2) would impose an annual paperwork burden on each SB SEF to maintain its risk management system. The Commission preliminarily estimates that the ongoing annual burden for a SB SEF to maintain its risk management system would be 172.5 hours on average for a total annual burden for all SB SEFs combined of 3,450 hours.[554] The Commission believes that the ongoing burden of complying with the proposed rule's collection of information burden would include, among other things, updating systems to address any issues detected, updating risk management controls to reflect changes in the SB SEF's business model, and documenting and preserving its written description of risk management controls. Based on industry sources, the Commission preliminarily believes that the

[542] Proposed Rule 811(i) would require a SB SEF to have the capacity to capture information that may be used in establishing whether rule violations have occurred, including through the use of automated surveillance systems as set forth in proposed Rule 813(b). Proposed Rule 813(a)(2) would require a SB SEF to monitor trading in SB swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. The Commission preliminarily believes that the information collection burden associated with these requirements would be included in the information collection burden for proposed Rule 813(b).

[543] 7,200 hours = 1,800 (initial hours burden per employee) × 4 (number of employees).

[544] 144,000 hours = 7,200 hours (initial burden per respondent) × 20 (number of SB SEF respondents).

[545] $30,000,000 = $1,500,000 (initial cost burden per respondent) × 20 (number of SB SEF respondents).

[546] 3,600 hours = 1,800 (annual hours burden per employee) × 2 (number of employees).

[547] 72,000 hours = 3,600 hours (annual burden per respondent) × 20 (number of SB SEF respondents).

[548] $10,000,000 = $500,000 (annual cost burden per respondent) × 20 (number of SB SEF respondents).

[549] *See* proposed Rule 809(d)(1).

[550] *See* proposed Rule 809(d)(2).

[551] *See* 17 CFR.240.15c3–5. Though the Commission is relying on the PRA estimates it prepared in connection with Rule 15c3–5 to inform its PRA estimates for this proposed rule, the Commission notes that some of the specific requirements, controls and procedures in Rule 15c3–5 are not contained in the proposed Rule 809(d) for SB SEFs.

[552] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[553] 4,500 hours = 225 (estimated average one-time burden to set up or modify systems to comply with collection of information under proposed Rule 809(d)) × 20 (number of SB SEF respondents).

[554] 3,450 hours = 225 hours (estimated average annual burden to establish or maintain risk management systems to comply with collection of information under proposed Rule 809(d)) × 20 (number of SB SEF respondents).

maintenance of a SB SEF's risk management systems would performed internally by one or more programmers.

The Commission preliminarily believes that proposed Rule 809(d) would impose a one-time legal and compliance burden on each SB SEF to comply with the requirement to establish, document, and maintain risk management controls and supervisory procedures. Based on the Commission's experience with broker-dealers and ATSs, the Commission preliminarily estimates that the average initial one-time legal and compliance burden would be approximately 52.5 hours per SB SEF for a total one-time legal and compliance burden for all SB SEFs combined of 1,050 hours.[555] The Commission preliminarily estimates that one internal compliance attorney and one internal compliance manager would spend on average 7.5 hours each to evaluate appropriate access controls and procedures. The Commission also preliminarily estimates that one internal compliance attorney and one compliance manager would each require approximately 15 hours, and the CCO would require approximately 7.5 hours, to set up or modify compliance policies and procedures to comply with the proposed rule, which includes establishing written policies and procedures for reviewing the overall effectiveness of risk management controls and supervisory procedures.

The Commission also preliminarily believes that proposed Rule 809(d) would impose an annual paperwork burden on SB SEFs to review and document their written risk management controls and supervisory procedures. Based on the Commission's experience with broker-dealers and ATSs, the Commission believes that a SB SEF's ongoing annual burden would be approximately 75 hours on average for a total annual burden for all SB SEFs combined of 1,500 hours.[556] This estimate includes an average of 30 hours per year for each of an internal compliance attorney and compliance manager, and 15 hours per year for the CCO, to review, document and updated these policies and procedures.

Therefore, the Commission preliminarily estimates that the total one-time burden for all SB SEFs to comply with the collection of information requirements of proposed Rule 809(d) would be 5,550 hours[557] and the total annual burden to comply with the proposed Rule would be 4,950 hours.[558]

10. Composite Indicative Quote and Executable Bids and Offers

Proposed Rule 811(e) would require a SB SEF that operates an RFQ platform to create and disseminate through the SB SEF a composite indicative quote, made available to all participants, for SB swaps traded on or through the SB SEF and the Commission's proposed interpretation of SB SEF would require each SB SEF, at the minimum, to provide any participant with the ability to make and display executable bids or offers accessible to all participants on the SB SEF, if the participant wishes to do so. The Commission preliminarily believes that most if not all of the respondents that operate RFQ platforms already have systems that collect and disseminate a composite indicative quote for other securities traded on or through the respondents' platforms. The Commission also preliminarily believes that SB SEFs currently have the capability to offer the executable bids and offers function to its participants. Thus, the Commission preliminarily believes that the composite indicative quote and the executable bids and offers requirements would result in little or no collection of information burden for such entities. The Commission recognizes, however, that some SB SEFs may have a one-time burden to establish or update their systems to collect and disseminate composite indicative quote information and to offer the executable bids and offers function and an ongoing annual burden to determine that such composite indicative quote mechanisms and executable bids and offers function are operating properly. The Commission does not know how many SB SEFs would have to establish or update their systems to collect and disseminate composite indicative quote information or to provide the executable bids and offer function. Therefore, for PRA purposes the Commission estimates that all of the estimated 20 SB SEF respondents would incur the paperwork burdens associated with these requirements.

The Commission preliminarily believes that this work would be performed internally by one senior programmer and one programmer. The Commission preliminarily believes that one senior programmer and one programmer would spend approximately 40 hours each to establish or update the SB SEF's systems to include the composite indicative quote and executable bids and offers functions. The total one-time burden, on average, for a SB SEF to establish or update its system to include these functions would be 80 hours for a total one-time burden for all SB SEFs combined of 1,600 hours.[559] Further, the Commission preliminarily believes that one programmer would spend approximately 50 hours annually, on average, monitoring and updating the system to determine that the composite indicative quote and the executable bids and offers functions would be operating appropriately. The total annual burden to all SB SEFs combined for monitoring and updating these mechanisms would be 1,000 hours.[560]

11. Total Paperwork Burden Under Regulation SB SEF

Based on the foregoing, the Commission preliminarily believes that the total one-time hourly burden for all SB SEFs and SB SEF participants combined pursuant to the requirements under Regulation SB SEF is equal to 264,801 hours[561] and $41,692,900.[562]

The Commission preliminarily believes that annual ongoing burden for all SB SEFs and SB SEF participants combined pursuant to the requirements

[555] 1,050 hours = 52.5 hours (estimated average one-time burden to establish, document, and maintain risk management controls and supervisory procedures to comply with collection of information under proposed Rule 809(d)) × 20 (number of SB SEF respondents).

[556] 1,500 hours = 75 hours (estimated average annual burden to establish, document, and maintain risk management controls and supervisory procedures to comply with collection of information under proposed Rules 809(d)(1) and (2)) × 20 (estimated number of SB SEF respondents).

[557] *See supra* notes 553 and 555 and accompanying text for calculations of total one-time burden to comply with collection of information under proposed Rules 809(d).

[558] *See supra* notes 554 and 556 and accompanying text for calculations of total annual burden to comply with collection of information under proposed Rules 809(d).

[559] 1,600 hours = 80 hours (estimated one-time collection of information burden to establish or update systems to comply with proposed Rule 811(e) and the Commission's proposed interpretation of the definition of SB SEF as it relates to executable bids and offers functions) × 20 (estimated number of SB SEF respondents).

[560] 1,000 hours = 50 hours (estimated annual collection of information burden to comply with proposed Rules 811(e)) × 20 (estimated number of SB SEF respondents).

[561] 263,201 hours = 13,901 hours (registration) + 4,400 hours (rule-writing) + 13,300 (SB SEF recordkeeping) + 72,450 (SB SEF participant recordkeeping) + 6,400 (timely publication of trading information) + 3,200 (CCO requirements) + 144,000 (surveillance systems) + 5,550 (access by ECPs) + 1,600 (composite indicative quote).

[562] $41,692,900 = $10,478,900 (registration) + $36,000 (SB SEF recordkeeping) + $378,000 (SB SEF participant recordkeeping) + $800,000 (CCO requirements) + $30,000,000 (surveillance systems).

under Regulation SB SEF are equal to 165,632 hours [563] and $22,342,700.[564]

E. Collection of Information Is Mandatory

The collections of information pursuant to Regulation SB SEF would be mandatory for all registered SB SEFs and SB SEF participants, as applicable.

F. Responses to Collection of Information Will Not Be Confidential

Other than information for which a SB SEF or a SB SEF participant requests confidential treatment, or as may otherwise be kept confidential by the Commission, and which may be withheld from the public in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. 522, the collection of information pursuant to the proposed rules would not be confidential and would be publicly available.

G. Retention Period of Recordkeeping Requirements

Although recordkeeping and retention requirements have not yet been established for SB SEFs under the Exchange Act provisions added by the Dodd-Frank Act, the Commission is authorized to adopt such rules under proposed Regulation SB SEF as part of this proposed rulemaking.[565] Proposed Rule 818 under Regulation SB SEF would require a SB SEF to maintain records of all documents made or received by it in the conduct of its business for a period of not less than five years, the first two years in an easily accessible place.

H. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

3. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503; and (2) Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–06–11. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–06–11, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, Station Place, 100 F Street, NE., Washington, DC 20549–0213.

XXVIII. Consideration of Costs and Benefits

A. Overview

To increase the transparency and oversight of the OTC derivatives market, Title VII of the Dodd-Frank Act requires the Commission to undertake a number of rulemakings to implement the regulatory framework for SB swaps that is set forth in the legislation, including the registration and regulation of SB SEFs.[566] Pursuant to Section 763(c) of the Dodd-Frank Act, the Commission is required to adopt rules providing for: (1) The registration and regulation of SB SEFs; and (2) the compliance by SB SEFs with the Core Principles set forth thereunder.[567] To satisfy this statutory mandate, the Commission is proposing Regulation SB SEF, which would contain several rules setting forth the requirements for a platform or system to register with the Commission, and to maintain that registration, as a SB SEF, and Form SB SEF, which would contain the application form and the materials that an applicant would have to provide as part of the registration process. In addition, proposed Regulation SB SEF would contain a series of rules that are designed to implement the 14 Core Principles with which a SB SEF is statutorily required to comply. The proposed registration form and rules contained in Regulation SB SEF are designed to promote the goals of the Dodd-Frank Act of having SB swaps trade on a regulated market. In conjunction with other rulemakings proposed by the Commission under the Dodd-Frank Act, including rule proposals relating to SB swap trade reporting,[568] SB swap data repositories,[569] the mitigation of conflicts of interest relating to SB SEFs, SBS exchanges and SB swap clearing agencies,[570] and SB swap anti-fraud and anti-manipulation prohibitions,[571] the proposed registration form and rules governing SB SEFs are intended to lead to a more robust, transparent, and competitive environment for the market for SB swaps.

Currently, SB swaps trade in the OTC market, rather than on regulated markets. The existing market for SB swaps is opaque, with little, if any, pre-trade or post-trade transparency. A key goal of the Dodd-Frank Act is to bring more transparency to the OTC derivatives markets and to bring the trading of SB swaps onto regulated markets.[572] The Commission, in drafting rules to implement the SB SEF provisions of the Dodd-Frank Act, is proposing to put in place a regulatory structure that will foster a transparent, fair, and competitive market for the

[563] 164,632 hours = 3,154 (registration) + 2,400 hours (rule-writing) + 24,208 hours (SB SEF reporting) + 27,500 hours (SB SEF participant reporting) + 3,600 hours (SB SEF recordkeeping) + 8,400 hours (SB SEF participant recordkeeping) + 4,700 hours (rule and product filings) + 13,720 hours (CCO requirements) + 72,000 hours (surveillance systems) + 4,950 (access by ECPs) + 1,000 (composite indicative quote).

[564] $22,342,700 = $2,700 (registration) + $1,880,000 (SB SEF reporting) + $10,460,000 (CCO requirements) + $10,000,000 (surveillance systems).

[565] As discussed above, new Section 3D of the Exchange Act sets forth 14 Core Principles that a SB SEF would need to satisfy, including one relating to recordkeeping and reporting, and provides the Commission with rulemaking authority with respect to implementation of these Core Principles. *See* Public Law 111–203, § 763(c) (adding Section 3D of the Exchange Act).

[566] *See* Public Law 111–203 Preamble.

[567] The Core Principles applicable to SB SEFs are captioned: (1) Compliance with Core Principles; (2) Compliance with Rules; (3) Security-Based Swaps Not Readily Susceptible to Manipulation; (4) Monitoring of Trading and Trade Processing; (5) Ability to Obtain Information; (6) Financial Integrity of Transactions; (7) Emergency Authority; (8) Timely Publication of Trading Information; (9) Recordkeeping and Reporting; (10) Antitrust Considerations; (11) Conflicts of Interest; (12) Financial Resources; (13) System Safeguards; and (14) Designation of Chief Compliance Officer.

[568] *See* Reporting and Dissemination Release, *supra* note 6.

[569] *See* SDR Release, *supra* note 6.

[570] *See* Regulation MC Proposing Release, *supra* note 82.

[571] *See* Prohibition Against Fraud, Manipulation, and Deception in Connection with Security-Based Swaps, Exchange Act Rel. No. 63236, proposed on Nov. 3, 2010.

[572] *See* Public Law 111–203 Preamble. *See also* Section 3C(h) of the Exchange Act, Public Law 111–203, requiring that, subject to certain exceptions, any SB swap subject to mandatory clearing must be traded on a SB SEF or an exchange.

trading of SB swaps. Considering the early stage of regulatory development and the existing structure of the SB swaps market, however, the Commission is mindful that the proposed rules could have unforeseen consequences, either beneficial or undesirable, with respect to the shape that this market will take. In the Commission's view, it is important that the regulatory structure provides incentives for the trading of SB swaps on regulated markets that are designed to foster greater transparency and competition and are subject to Commission oversight, while at the same time allowing for the continued efficient innovation and evolution of the SB swaps market. In this regard, rather than proposing a rule that establishes a prescribed format for the system or platform that constitutes a SB SEF, the Commission is proposing to provide baseline principles, consistent with the requirements of the Exchange Act, that any potential SB SEF would need to meet as a condition to registration as a SB SEF. Such an approach would allow flexibility to those trading venues that plan to register as SB SEFs and would permit the continued development of organized markets for the trading of SB swaps. This more flexible approach also would allow the Commission to monitor the market for SB swaps and propose adjustments, as necessary, as this market evolves.

The Commission believes that the proposed registration form and rules under Regulation SB SEF would create a comprehensive structure for the registration and regulation of SB SEFs, but would also impose costs on market participants. The Commission is sensitive to the costs and benefits that would result from proposed Regulation SB SEF and has identified certain costs and benefits of these proposals, as described more fully below. The Commission requests comment on the costs and benefits associated with the proposed registration form and rules contained in proposed Regulation SB SEF, and its cost-benefit analysis thereof, including identification and assessments of any costs and benefits not discussed in this analysis. The Commission also seeks comment on the accuracy of any of the benefits and costs it has identified below and also welcomes comments on the accuracy of any of its cost estimates. Finally, the Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

Because the structure of the SB swaps market and the behavior of its market participants is likely to change after the effective date of the Dodd-Frank Act and implementation of the Commission's rules promulgated thereunder, the impact of—and the costs and benefits that may result from—proposed Regulation SB SEF may change over time. As commenters review proposed Regulation SB SEF, they are urged to consider generally the role that regulation may play in fostering or limiting the development of the market for SB swaps.

B. Benefits

SB SEFs are expected to play a critical role in enhancing the pre-trade transparency and oversight of the market for SB swaps. SB SEFs should help further the statutory objective of financial stability and greater transparency for SB swaps [573] by providing a venue for counterparties to execute trades in SB swaps and also by serving as a conduit for information regarding trading interest in SB swaps. In addition, because the proposed rules would impose certain regulatory responsibilities on SB SEFs, such as monitoring trading, assuring the ability to obtain information, and establishing and enforcing rules and procedures to ensure the financial integrity of SB swaps entered on or though the SB SEF, SB SEFs would be charged with an important role in helping to oversee trading in the market for SB swaps on an ongoing basis and allowing regulators to quickly assess information regarding the potential for systemic risk across trading venues.

Broadly, the Commission anticipates that Regulation SB SEF may bring several overarching benefits to the SB swap market. These include the following:

Improved Transparency. The proposed rules on the registration and regulation of SB SEFs could have significant benefits to the market for SB swaps. The trading of SB swaps on regulated markets, *i.e.,* SB SEFs, should bring more transparency to the currently opaque market for SB swaps. In addition, the Commission's proposed interpretation of the definition of a SB SEF, combined with the proposed rules relating to pre-trade transparency, should increase overall transparency in the market for SB swaps. Increased pre-trade price transparency should help alleviate informational asymmetries that may exist today in the SB swaps markets and allow an increased number of market participants to be able to see the trading interest of other market participants prior to trading, which should lead to increased price competition among market participants.[574] The Commission preliminarily believes that the proposed requirements with respect to pre-trade price transparency should lead to more efficient pricing in the SB swaps market,[575] but is mindful that, under certain circumstances, pre-trade price transparency could also discourage the provision of liquidity by some market participants.[576]

The Commission preliminarily believes that proposed Rule 811(e), which would require a SB SEF that operates an RFQ platform to create and disseminate through the SB SEF a composite indicative quote, made available to all participants, for SB swaps traded on or through the SB SEF, would provide a certain level of pre-trade transparency for an RFQ platform. Displaying the composite indicative quote would include displaying both composite indicative bids and composite indicative offers for SB swaps traded on or through the SB SEF. As a result of this proposal, an average indicative pricing interest would be available to all of the SB SEF's participants. The Commission also believes that including RFQ responses in the composite indicative quote would be an appropriate method to inform SB SEF participants of changes in the average level of pricing interest due to responses.[577] At the same time, the dissemination of a composite indicative quote would provide a greater level of anonymity for the execution of trades on an RFQ platform compared with the dissemination of an individual participant's indications of interest or responses to an RFQ.

In addition, the Commission preliminary believes that proposed Rule 817(c), which prohibits a SB SEF from making any information regarding a SB swap transaction publicly available prior to the time that a SDR would be permitted to disseminate the trade information, could positively impact the market for block trades. Under proposed Rule 817(c), a SB SEF could not

[573] *See* Public Law 111–203 Preamble.

[574] *See, e.g.,* Ananth Madhavan, *Market Microstructure: A Practitioner's Guide,* Fin. Analysts J., Vol. 58, at 38 (2002) (nondisclosure of pre-trade price information benefits dealers by reducing price competition).

[575] *See, e.g.,* Ekkehart Boehmer, *et al., Lifting the Veil: An Analysis of Pre-trade Transparency at the NYSE,* J. of Fin., Vol. LX (2005) (greater pre-trade price transparency leads to more efficient pricing).

[576] *See, e.g.,* Ananth Madhavan, *et al., Should Securities Markets Be Transparent?* J. of Fin. Markets, Vol. 8 (2005) (finding that an increase in pre-trade price transparency leads to lower liquidity and higher execution costs, because limit-order traders are reluctant to submit orders given that their orders essentially represent free options to other traders).

[577] *See supra* Section VIII.C.1.

publicly disseminate complete transaction reports for block trades (*i.e.,* including the transaction ID and the full notional size) prior to the time SDRs would be permitted to do so. The Commission believes that proposed Rule 817(c) would provide parties to block trades some flexibility in timing their transactions. Based on discussions with market participants, the Commission believes that parties to block trades favor a consistent approach to the timing of the public reporting of such trades. Therefore, the Commission preliminary believes that parties to block trades, especially dealers, would be able to have more flexibility in effecting a block trade and any associated hedging transactions, because trade information about the block could not be made publicly available by the SB SEF prior to the time that it is permitted to be disseminated by a SDR.[578] Furthermore, if the market participants choose to utilize this functionality, the display of executable bids or offers should also improve pre-trade price transparency.

Improved Oversight. The proposed rules would require SB SEFs to maintain an audit trail and surveillance systems to monitor trading. Regulation SB SEF also would require comprehensive reporting and recordkeeping by SB SEFs. These requirements would put in place a structure that would provide the SB SEF with information to better enable it to oversee trading on its market by its participants, including detecting and deterring fraudulent and manipulative acts. Regulation SB SEF would also provide the Commission with greater access to information on the trading of SB swaps to support its responsibilities to oversee the SB swaps market. Further, Regulation SB SEF would enable the Commission to share that information with other Federal financial regulators in instances of broad market turmoil.

This framework could in turn lead to increased confidence in a well-regulated market among SB swaps market participants. To the extent market participants consider a well-regulated market as significant to their investment decisions, trust, which is a component of investor confidence, is improved and market participants may be more willing to participate in the SB swaps market. An increase in participation in the SB swaps market can potentially benefit the SB swaps market as a whole. Further, to the extent that market participants utilize SB swaps to better manage their risk with respect to a position in underlying securities or assets, the extent they are willing to participate in the SB swaps market may impact their willingness to participate in the underlying asset's market. Thus, the Commission preliminarily believes that the proposal could benefit the securities markets overall by encouraging a more efficient, and potentially higher, level of capital investment.

Improved Access and Competition. Currently, the market for SB swaps is dominated by a small group of dealers.[579] The Dodd-Frank Act's mandate to bring SB swaps that are subject to the mandatory clearing requirement onto regulated markets, unless the SB swap is not made available to trade,[580] and proposed Regulation SB SEF, which is intended to help implement the statutory directive, should help foster greater competition in the trading of SB swaps by increasing access to SB swap trading venues. The proposed rules would provide a framework to allow a number of trading platforms or systems to register as SB SEFs and thus more effectively compete for business in SB swaps. Proposed Rule 809(b) would require a SB SEF's rules to permit all eligible persons that meet the requirements for becoming a participant as set forth in the SB SEF's rules to become participants in the SB SEF.[581] Proposed Rule 809(b) would also give a SB SEF the option to not permit any non-registered ECP to become participants in the SB SEF. As such, proposed Rule 809(b) provides SB SEFs with flexibility in choosing whether or not to provide access to non-registered ECPs. Proposed Rule 809(d) would require that, if a SB SEF chooses to permit non-registered ECPs to become participants, it would be responsible for establishing risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks associated with the non-registered ECP's access. These proposed requirements should reduce risks associated with access to SB SEFs by non-registered ECPs (*e.g.,* if they enter into trades that exceed appropriate credit or capital limits or submit erroneous orders). In addition, the Commission preliminarily believes that a SB SEF is best positioned to implement the proposed controls and procedures.

Proposed Rule 811(b)(1) would require every SB SEF to establish fair, objective and not unreasonably discriminatory standards for granting impartial access to trading on the SB SEF. In addition, proposed Rule 811(b)(3)–(4) would require every SB SEF to make and keep records of all denials, or limitations, of access to the SB SEF, and to report such information to the Commission. These proposed requirements would further the requirement in the Exchange Act that SB SEFs provide market participants with impartial access.[582] Taken together, these proposed rules should foster greater direct access to SB SEFs by dealers, major SB swap participants, brokers and ECPs. This impartial access should, in turn, promote greater participation by liquidity providers and competition on each SB SEF. Increased participation could lead to reduced information asymmetries among market participants, while increased competition could lead to more efficient and better pricing in the SB swaps market. Further, a more competitive environment should lead to lower trading costs, which may lead to increased participation in the SB swaps market. Impartial access requirements also would help guard against situations where certain participants in a SB SEF (who also might be owners of the SB SEF) might seek to limit the number of other participants in the SB SEF in order to limit competition and increase their own profits. Thus, the impartial access should, in turn, promote greater participation by liquidity providers and competition on each SB SEF.

As proposed, SB SEFs would remain free to establish standards for impartial access consistent with the requirement that they be fair and objective and do not unfairly discriminate, and that they do not apply the standards in an unfair or unreasonably discriminatory manner. Therefore, SB SEFs could choose the most cost-effective methods to ensure that all their participants and would-be participants are evaluated on a fair and impartial basis.

To address the problem of restricting the scope of SB swaps that trade on SB SEFs, the Commission is proposing to require that each SB SEF have a swap review committee that would determine which SB swaps would trade on the SB SEF, as well as the SB swaps that should no longer trade on the SB

[578] *See* Reporting and Dissemination Release, *supra* note 6, and proposed Rule 904(d) of Regulation SBSR. *See also* proposed Rule 817(c) of Regulation SB SEF.

[579] *See supra* note 81.

[580] *See* Section 3C(h) of the Exchange Act.

[581] Proposed Rule 809(a) would require SB SEFs to only permit a person to become a participant in the security-based swap execution facility if such person is registered with the Commission as a security-based swap dealer, major security-based swap participant, or broker (as defined in section 3(a)(4) of the Act, 15 U.S.C. 78c(a)(4)), or if such person is an eligible contract participant (as defined in section 3(a)(65) of the Act, 15 U.S.C. 78c(a)(65)).

[582] *See* Section 3D(d)(2)(B)(i) of the Exchange Act.

SEF.[583] Proposed Rule 811(c)(2) would require that the composition of the swap review committee must provide for the fair representation of participants of the SB SEF as well as other market participants such that each class of participant and other market participants would be given the right to participate in such swap review committee and that no single class of participant or category of market participant would predominate. Having a swap review committee that provides for the fair representation of participants and other market participants should help assure that the process of determining those SB swaps that should trade on the SB SEF would be fair and that various classes of participants in the SB SEF, as well as other market participants, would have a voice in those decisions.

Consequently, the Commission believes that the proposed rules requiring impartial access to trading on the SB SEF and providing for fair representation on the swap review committee to determine which SB swaps should be traded on SB SEFs should help mitigate the inappropriate exercise of market power by any given market participant or group of market participants. In addition, the Commission believes that, in a competitive market, new SB SEFs could be created to attract market participants that are unable to meet the objective requirements of more exclusive SB SEFs or to trade the SB swaps other SB SEFs decide not to trade.

The Commission also believes that its proposed interpretation of which facilities fall within the term SB SEF, providing, at the minimum, any participant with the ability to make and display executable bids or offers accessible to all participants on the SB SEF, if the market participant wishes to do so, would also improve access to the SB SEF by participants because it provides participants an additional method with which to execute transactions on the SB SEF.

Improved Commission and SB SEF Oversight. The Commission believes that one of the goals of the Dodd-Frank Act is to increase the regulatory oversight over the currently unregulated OTC derivative markets.[584] Proposed Regulation SB SEF would provide the means for the Commission to gain better insight into and oversight of the market for SB swaps. The proposed rules would provide the Commission the ability to, among other things, review the rules of SB SEFs, obtain data and records from SB SEFs, and inspect and examine SB SEFs, all of which would support the Commission's oversight function over the SB swaps market, as directed by Congress in the Dodd-Frank Act.

Specifically, proposed Rule 818(a) would require each SB SEF to keep and preserve all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records that would be made or received by it in the conduct of its business. In addition, proposed Rule 818(c) would require SB SEFs to keep audit trail records relating to all orders, requests for quotations, responses, quotations, other trading interest, and transactions that are received by, originated on, or executed on, the SB SEF. The records required to be kept, preserved and maintained by a SB SEF under proposed Rule 818 would help the Commission to determine whether an SB SEF is operating in compliance with the Exchange Act and the rules and regulations thereunder. The audit trail information required to be maintained under proposed Rule 818(c) would facilitate the ability of the SB SEF and the Commission to carry out their respective obligations under the Exchange Act, by providing a record of the complete history of all trading interest entered and transactions executed on the SB SEF. This audit trail could be used to help detect abusive or manipulative trading activity, prepare reconstructions of activity on the SB SEF or in the SB swaps market, and generally to understand the causes of unusual market activity.

Furthermore, proposed Rule 811(h) would require the SB SEF to make and keep records specifically of all disciplinary proceedings and appeals, which would allow the Commission to review the disciplinary process at a SB SEF, providing the Commission an additional tool to carry out its oversight responsibilities. The proposed registration requirements and related proposed Form SB SEF, and the CCO's annual compliance report, which are further discussed below, should also aid the Commission in its oversight responsibilities. As a whole, proposed Regulation SB SEF should facilitate the Commission's work in preparing the semi-annual and annual public reports of SB swap data required by Section 763 of the Dodd-Frank Act, because the Commission would be able to obtain information about the SB swap market through its oversight of SB SEFs.[585]

Improved Automation. In order to comply with the requirements of proposed Regulation SB SEF relating to recordkeeping and surveillance, SB SEFs would need to invest in and develop automated technology systems to store, monitor and communicate a variety of trading data, including orders, requests for quotations, responses and quotations, among others. The Commission preliminary believes that the proposed rules should bring about increased automation in the SB swaps markets. This increased automation could help market participants more efficiently track their trading and risk exposures in SB swaps. In addition, the automation and systems development associated with the regulation of SB SEFs, as required by proposed Regulation SB SEF, could provide SB swaps market participants with new platforms and tools to execute and process transactions in SB swaps at a lower expense per transaction. Such increased efficiency would enable participants of the SB SEF to handle increased volumes of SB swaps with greater efficiency.

In addition to the broad benefits that the Commission anticipates that Regulation SB SEF may bring to the SB swaps market, the Commission preliminarily believes that its individual proposed rules may bring particular benefits to the SB swap market. These include the following:

Interpretation of SB SEF Definition. The Commission believes that its proposed interpretation of the scope of the definition of SB SEF[586] should provide sufficient flexibility for market participants in creating and operating a variety of SB SEFs to trade SB swaps. The Commission preliminary believes that a system or a platform which allows a participant the ability to send an RFQ to *all* participants, as well as the choice to send an RFQ to fewer than all participants, would provide flexibility to the market, because participants would be able to trade SB swaps by accepting bids and offers from multiple participants, while still preserving the ability of each participant to decide how

[583] *See* proposed Rule 811(c). *See also* Core Principle 3 and proposed Rule 812, which permit a SB SEF to trade only SB swaps that are not readily susceptible to manipulation. Prior to trading any SB swap, proposed Rule 812 would require the swap review committee to determine whether, after taking into account all of the terms and conditions of the SB swap and the markets for the SB swap and any underlying security or securities, that such SB swap is not readily susceptible to manipulation. Proposed Rule 812 also would require the swap review committee to periodically review that determination.

[584] *See* Public Law 111–203 Preamble.

[585] *See* Section 763(i) of the Dodd-Frank Act requiring the Commission to provide SB swap data to the public.

[586] *See supra* Section III.B for a detailed discussion of the proposed interpretation of the definition of SB SEF.

broadly or narrowly to disseminate his or her RFQ.

The Commission believes that this proposed interpretation would likely encourage a greater number of SB swaps to trade on SB SEFs because, as mentioned above, it would give requestors the flexibility to determine how best to broadcast their interests.

The Commission believes that, rather than proposing a rule that establishes a prescribed format for a system or platform that constitutes a SB SEF, the better approach is to provide baseline principles, as outlined in the proposed interpretation consistent with the requirements of the Exchange Act, that any potential SB SEF would need to meet as a condition to registration as a SB SEF. Such an approach should provide flexibility to those trading venues that plan to register as SB SEFs and would permit the continued development of organized markets for the trading of SB swaps.

Exemptions from Definition of Exchange and Certain Regulatory Requirements Applicable to a Broker. The proposed rules would include exemptions for SB SEFs from the definition of "exchange" and from most regulations governing brokers. Using its exemptive authority under Section 36 of the Exchange Act, the Commission is proposing: (1) To amend Rule 3a1–1 under the Exchange Act to exempt any SB SEF from the definition of "exchange," if such SB SEF provides a marketplace solely for the trading of security-based swaps (and no other security) and complies with the provisions of proposed Regulation SB SEF; [587] and (2) new Rule 15a–12 to allow a person that meets the definition of a SB SEF and broker, to satisfy the broker registration requirements by registering as a SB SEF. The Commission believes that Congress specifically provided a comprehensive regulatory framework for SB SEFs in the Dodd-Frank Act and, therefore, SB SEFs should not also be required to be regulated as national securities exchanges or as brokers. Without these proposed exemptions, SB SEFs would be required to register with the Commission not only as SB SEFs, but also as exchanges and brokers. Given the regulatory framework for SB SEFs required by the Exchange Act and proposed Regulation SB SEF, the Commission preliminarily believes that requiring a SB SEF to register in such multiple capacities would not be efficient. The Commission believes that reducing or eliminating such inefficiency will confer an overall benefit to the SB swaps market by reducing the costs of complying with unnecessary rules or regulations.

Registration. The registration of SB SEFs is a requirement under the Dodd-Frank Act.[588] Proposed Rule 810(a) incorporates the requirement under the Dodd-Frank Act that a SB SEF, in order to be registered and maintain registration, comply with the Core Principles in Section 3D(d) of the Exchange Act and any requirement that the Commission may impose by rule or regulation. The proposed registration process is intended to implement this requirement and assist the Commission in overseeing and regulating the SB swaps market. The information to be provided on proposed Form SB SEF is designed to enable the Commission to assess whether an applicant has the capacity and the means to perform the duties of a SB SEF and to comply with the Core Principles and other requirements imposed on registered SB SEFs.

In addition, the amendments, supplemental information and notices that the Commission proposes to require registered SB SEFs to file pursuant to proposed Rules 802, 803 and 804 are designed to further the ability of the Commission to efficiently monitor SB SEFs' compliance with the provisions of the Exchange Act and to oversee the marketplace for SB swaps and, specifically, the trading of SB swaps on SB SEFs.

Rule and Product Filings. Proposed Rules 805 and 806 set forth two alternative filing processes for a new rule or rule amendment of a registered SB SEF, and proposed Rules 807 and 808 set forth two alternative filing processes for SB SEFs to submit filings for new products that it trades. The proposed rules are intended to assist the Commission in overseeing and regulating the trading of SB swaps and to help ensure that SB SEFs operate in compliance with the Exchange Act. The self-certification processes of Rules 806 and 807 require SB SEFs to include a certification that the proposed new rule or rule amendment or SB swap, as the case may be, complies with the Exchange Act and Commission rules and regulations thereunder.[589]

The information to be provided by the SB SEF under proposed Rules 805 and 806 would further the ability of the Commission to assess whether a SB SEF has the capacity to perform the duties of a SB SEF and to comply with the duties, Core Principles, and other requirements imposed on registered SB SEFs, and to ensure that a registered SB SEF continues to comply with the requirements imposed on registered SB SEFs under the Exchange Act. In addition, proposed Rule 805(a)(4), which would require a SB SEF to explain the anticipated benefits and potential anticompetitive effects on market participants of a proposed new rule or rule amendment should help foster a competitive SB swaps market because it would require SB SEFs to disclose the positive as well as negative aspects of the SB SEF's proposed rules.

The information to be provided by the SB SEF under proposed Rules 807 and 808 would further the ability of the Commission to obtain information regarding SB swaps that a SB SEF intends to trade on its market. In addition, because these processes are comparable to the parallel processes of the CFTC, they would promote efficiency for SB SEFs that are also registered as SEFs.

Chief Compliance Officer. The submission of the CCO's annual compliance report and the annual financial report to the Commission as would be required by proposed Rule 823 would help the Commission monitor the compliance activities and financial state of SB SEFs. These reports would also assist the Commission in carrying out its oversight of the SB SEFs and the SB swaps market by providing the Commission the information necessary to review instances, for example, of non-compliance and denials of access.

Conflicts of Interest. Proposed Rule 820 sets forth certain governance arrangements that would be required of SB SEFs. Proposed Rule 820(a) would require the rules of a SB SEF to assure a fair representation of its participants in the selection of its directors and administration of its affairs. No less than 20% of the total number of directors of the SB SEF would be required to be selected by the SB SEF participants. Further, the Commission proposes that SB SEF participant owners be restricted in their ability to participate in the "fair representation" process. In addition, proposed Rule 820(b) would require that at least one director on the Board be representative of investors ("investor director") who are (1) not SB swap dealers or major SB swap participants and (2) not associated with a participant. Finally, proposed Rule 820(c) would require the rules of a SB SEF to establish a fair process for SB SEF participants to nominate an alternative candidate or candidates to the Board by petition.

[587] *See* proposed Rule 3a1–1(a)(4).

[588] *See* Section 3D(a)(1) of the Exchange Act.

[589] *See* proposed Rules 806(a)(5)(iii) and 807(a)(4)(iii).

The requirements of proposed Rule 820 are important to help ensure that SB SEF participants and investors have a voice in the administration and governance of the SB SEF, without jeopardizing the overall independence of the Board.[590] The proposed governance requirements should also help to mitigate any conflicts of interest that may arise between SB SEF participants who also could be owners of the SB SEF, by reducing the possibility that a small group of market participants would have the ability to unfairly disadvantage other market participants through the SB SEF governance process. In order to further mitigate conflicts of interest and achieve fairness in the governance process of a SB SEF, the proposal would also provide for the ability of SB SEF participants to have alternative candidates by requiring the SB SEF to establish a fair process for SB SEFs to nominate an alternative candidate or candidates by petition. Finally, the Commission believes that requiring representation on the SB SEF Board by investors who are not SB swap dealers or major SB swap participants, or associated with SB SEF participants, would provide an important perspective to the governance and administration of a SB SEF. Investor directors could provide unique and different perspectives from dealers and other participants of the SB SEF, which should enhance the ability of the Board to address issues in an impartial fashion and consequently support the integrity of a SB SEF's governance.

C. Costs

Although the Commission believes that proposed Regulation SB SEF would result in significant benefits to the market for SB swaps, the Commission recognizes that the proposed registration form and rules would also entail significant costs. Some costs are difficult to precisely quantify and are discussed below.

The Commission is mindful that any rules it may adopt with respect to SB SEFs under the Dodd-Frank Act may impact the incentives of market participants with respect to where and how they trade SB swaps. The Commission is cognizant that its proposed interpretation of the definition of SB SEF, coupled with the level of pre-trade transparency that would be required for trading on a SB SEF, will impact the development of the SB swaps market. Further, if the rules proposed by the Commission are, or are perceived to be, too costly for trading venues to comply with, fewer entities than expected may seek to register as SB SEFs, thus impacting competition. In addition, if the proposed rules for trading on a SB SEF are perceived as too burdensome by market participants, some trading of SB swaps may move to foreign markets whose regulations are perceived to be less restrictive, thus frustrating the goals of the Dodd-Frank Act. At the same time, if the proposed rules relating to SB SEFs are too lenient, they may have little or no impact on the market structure and surveillance of the SB swaps markets, which could result in the loss of many of the benefits discussed above and fail to achieve the goals of the Dodd-Frank Act of greater transparency. In addition, because the trading mechanisms in the OTC market will continue to be largely unregulated, OTC-traded SB swaps may be perceived by some market participants to be less expensive to trade than SB SEF-traded swaps, *i.e.,* in the sense that they are subject to less regulation.

In addition, SB swaps traded on SB SEFs may be perceived to be subject to increased costs, monetary and otherwise. For example, some industry participants have expressed their belief that any proposed requirement of pre-trade transparency would force market participants to reveal valuable economic information regarding their trading interest more broadly than they may believe would be economically prudent and could discourage participation in the SB swaps market. An additional impact of pre-trade transparency are perceived costs associated with front running, if customers or dealers are required to show their trading interest before a trade is executed. These potential costs of pre-trade transparency may change market participants' trading strategies, which could result in them working more orders or finding ways to attempt to hide their interest.[591] If market participants view the Commission's proposal as too burdensome with respect to pre-trade transparency, dealers may be less willing to supply liquidity for SB swaps that trade on SB SEFs or exchanges, thus impacting liquidity and competition. On the other hand, if the requirement with respect to pre-trade transparency is too loose, the result could be that there would be no substantive change from the status quo, including no benefits of alleviating informational asymmetries, increasing price competition and supplying better executions beyond the changes in response to the other requirements of Dodd-Frank. However, the Commission believes that this concern depends on the degree of pre-trade transparency required and the characteristics of the trading market. The proposed rules are intended to provide for greater pre-trade transparency than currently exists without requiring pre-trade transparency in a manner that would cause participants to avoid providing liquidity on SB SEFs.

The requirements of the proposed rules would impose the same minimum level of pre-trade transparency and order interaction on block trades as on non-block trades. This can potentially have an impact on the liquidity available on those types of platforms that would provide for block trading. Today, many block trades are transacted through voice brokerage, without pre-trade transparency and order interaction. Block trading enables, among other things, entities with large exposures to certain business risks to hedge those risks. For example, investors considering making investments in, or lenders considering making loans to, certain corporate borrowers may seek to purchase credit default swap ("CDS") protection to hedge some portion of the credit risk the investor does not want to retain. The availability of such credit risk protection in large block transaction size may therefore influence investment or lending decisions which in turn may influence the cost of borrowing for corporations whose investors rely on block size CDS.

Generally, economic studies have shown that block trades benefit from different market structures than non-block trades.[592] These studies suggest that pre-trade transparency can be particularly costly for block trades as prices are likely to move adversely if the existence of a large unexecuted order becomes known. Other traders may front run the block trade order or simply infer information about future price movements from its presence, thus potentially making it more costly for the block-initiating participant to find a counterparty willing to trade at an acceptable price. In addition, if a block trade interacts with other trading interest on a SB SEF, there might not be enough liquidity on the SB SEF to execute the entire block trade, leaving a portion of the block trade unexecuted, or requiring the block to be broken into smaller order sizes, which also could

[590] Proposed Rule 702(d) under Regulation MC would require the Board of a SB SEF to have at least a majority of independent directors. *See* Regulation MC Proposing Release, *supra* note 82.

[591] *See, e.g.,* Ananth Madhavan, *Market Microstructure: A Survey,* J. of Fin. Markets, Vol. 3 (2000).

[592] *See, e.g.,* Bessembinder Paper, *supra* note 159.

lead to increased transaction costs and a decreased willingness of market participants to participate in block trades.

The Commission recognizes these potential costs and believes that the proposal mitigates these costs, because it would allow SB SEFs flexibility in setting their market structure and trading rules concerning block trades. This should allow SB SEFs to create certain trading structures, *e.g.,* multi-dealer RFQ platforms, that cater to block trades and others that cater to non-blocks. Moreover, under the proposed interpretation of the definition of SB SEF, for a transaction on an RFQ platform, the person exercising investment discretion for the transaction, whether it is the participant itself or the participant's customer, could choose to send the RFQ to less than all participants. Under this proposed interpretation, market participants would have the choice to determine how broad or how narrow to disseminate their intent to trade blocks. The Commission further notes that, if overall trading costs decline, then the costs of breaking up a block into smaller parcels and spreading out those parcels by market participants seeking to execute a block transaction may not actually increase.[593]

According to industry sources consulted by Commission staff,[594] the monetary cost of forming a SB SEF is estimated to range from approximately $15 million to $20 million per SB SEF for the first year of operation, if an entity were to establish a SB SEF without the benefit of modifying an already existing trading system. The industry sources consulted by Commission staff estimate that, for the first year of operation, the cost of software and product development would range from approximately $6.5 million to $10.5 million per SB SEF. The technological costs would be expected to decline considerably during the second and subsequent years of operation, and are estimated to be in the range of $3 million to $4 million per year per SB SEF. For entities that currently own and/or operate platforms for the trading of OTC derivatives, the cost of forming a SB SEF would be more incremental, given that these entities already have viable technology that could be modified to comply with the requirements that the Commission may impose for SB SEFs. According to industry sources, the incremental costs of enhancing a trading platform to be compatible with any SB SEF requirements established by the Commission would range from as low as $50,000 to as much as $3 million per SB SEF, depending on the enhancements needed to establish a platform compatible with any Commission rules governing SB SEFs. The annual ongoing cost of maintaining the technology and any improvements is estimated to be in the range of $2 million to $4 million.[595]

In addition, the regulatory requirement of complying with the statutory Core Principles would increase the regulatory obligations of registered SB SEFs with respect to operating as a SB SEF and with respect to overseeing the participants that trade on their facilities. Industry sources estimate that the cost to an SB SEF of complying with the rules relating to surveillance and oversight they expected the Commission to propose would be in the range of $1 million to $3 million annually, with initial costs likely to be at the higher end of such range, since a SB SEF would need to create the technology necessary to monitor and surveil its market participants, as well as to create a rule book in compliance with the Core Principles and related rules. The ongoing annual compliance costs are estimated by industry sources to be approximately $1 million, which would include the salary of a CCO and at least two junior compliance personnel, expected to be attorneys.

The Commission requests comments on the accuracy of these estimates. Specifically, the Commission requests comment on how the Commission can most accurately estimate the cost and benefits of the proposed rules and interpretations. Are there any important benefits and costs not currently discussed? How would the costs and benefits differ between operators of current platforms or systems trading SB swaps? What are the potential costs and benefits of the pre-trade transparency requirement, block trade requirement, order interaction requirement and other market structure requirements included in the proposal?

We detail below cost estimates for specifics parts of the proposed rules. Many of these costs estimates are based on the PRA estimates of costs and burdens from Section XXVII, as well as other costs associated with the proposed rules.

Registration. The Commission preliminary estimates that the aggregate initial costs to all potential SB SEF registrants to file Form SB SEF, including all exhibits thereto, would be approximately $13,505,940,[596] or approximately $675,297 [597] per SB SEF.

The Commission estimates the initial costs (aside from the costs associated with Exhibits F, H and P, which are separately discussed below) associated with proposed Form SB SEF would be $32,000 per SB SEF, or $640,000 for all potential SB SEFs.[598] This would include the time required to compile the information required by proposed Form SB SEF, prepare the proposed Form SB SEF itself, and file it with the Commission. In addition, Exhibits F and H to proposed Form SB SEF would require an applicant to submit financial reports that would need to satisfy a number of requirements, including the requirement that a certified public account audit each financial report relating to the SB SEF and a requirement that unaudited financial information be provided for certain affiliated entities of the SB SEF.[599] The Commission preliminarily believes that it is unlikely that during the initial implementation period a potential registrant would have audited financial statements for the SB SEF in the ordinary course of business prior to applying for registration on Form SB SEF. Therefore, in order to register as a SB SEF with the Commission on Form SB SEF and comply with Exhibits F and H thereto, potential registrants would incur an initial cost to generate such financial statements. Based on conversations with operators of current

[593] *See, e.g.,* Amber Anand, *et al., Market Crashes and Institutional Trading,* Working Paper, Social Science Research Network (2010).

[594] In discussing estimated costs with Commission staff, these industry sources were generally familiar with the requirements of the Dodd-Frank Act and the Core Principles and related requirements specified therein, but were not aware of the specifics of the rules being proposed. Thus, they were able to provide the broad general estimates of projected costs, which are described here. More specific estimates as to the costs associated with specific rules are detailed further below.

[595] Although there currently are trading systems that trade SB swaps on an OTC basis, the Commission preliminarily believes that no such systems are currently in operation that would comply, without modifications, with the requirements of proposed Regulation SB SEF.

[596] *See infra* note 597.

[597] $13,505,940/20 potential SB SEF registrants = $675,297.

[598] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden imposed by proposed Form SB SEF (other than Exhibits F, H and P of Form SB SEF) for SB SEF registration would be 100 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the one-time estimated dollar cost to register as a SB SEF would be $32,000 (100 hours × $320), or $640,000 ($32,000 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[599] *See supra* Section XXVII.D.1.

trading platforms and the Commission's experience with entities of similar size, the Commission preliminarily estimates that each potential SB SEF registrant would incur, on average, a cost of $99,000 to complete the financial statements,[600] and a cost of $500,000 for independent public accounting services. In the aggregate, these costs are estimated to be $1,980,000[601] and $10,000,000,[602] respectively.[603]

The Commission also estimates that it would cost approximately $7,920 per respondent to compile, review, and submit the financial reports for certain affiliated entities as required pursuant to Exhibit H to proposed Form SB SEF, or $158,400 in the aggregate.[604] All of the financial statements required by Exhibits F and H to proposed Form SB SEF would need to be provided in XBRL, as required in Rules 405(a)(1), (a)(3), (b), (c), (d) and (e) of Regulation S–T.[605] This would create an additional cost for potential SB SEF respondents. The Commission preliminarily estimates, based on its experience with other data tagging initiatives, that these requirements would add an additional cost on average of approximately $12,096[606] and $23,000 in outside software and other costs per respondent, or $241,920[607] and $460,000[608] in the aggregate, respectively. Thus, for complying with the financial statement requirements under Exhibits F and H to proposed Form SB SEF, the Commission estimates a total initial cost of approximately $642,016 per respondent[609] and $12,840,320 in the aggregate for all respondents.[610]

Exhibit P to proposed Form SB SEF would require SB SEFs controlled by other persons and non-resident SB SEFs to provide opinions of counsel as required by Rules 801(e) and (f), respectively. Therefore, in order to register as a SB SEF with the Commission on Form SB SEF, potential registrants that are controlled by other persons or that are non-resident persons would incur an initial cost to generate such opinions of counsel. As discussed above, the Commission preliminarily estimates that the average initial paperwork cost for each SB SEF controlled by another person and each non-resident SB SEF to provide the opinion of counsel required by Exhibit P would be one hour and $900 per SB SEF. As discussed above, the Commission preliminarily estimates that all 20 estimated applicants seeking to register as SB SEFs would be controlled by other persons and that one applicant seeking to register as a SB SEF will be a non-resident person. Therefore, in the aggregate, the costs to comply with Exhibit P are estimated to be $24,400 for all SB SEFs controlled by other persons[611] and $1,220 for all non-resident SB SEFs.[612]

Therefore, the Commission preliminarily estimates that the total one-time aggregate cost for all respondents to file the initial Form SB SEF, including all exhibits thereto, would be approximately $13,505,940.[613]

After the initial year in which a SB SEF would be registered, the Commission estimates that each registered SB SEF would submit 4 amendments to Form SB SEF on average and one annual update, at an annual cost of $48,000 per SB SEF, or $960,000 in the aggregate.[614] In addition, the Commission estimates that two SB SEFs controlled by another person would each submit one amendment to Exhibit P to Form SB SEF per year, at an annual aggregate cost of $2,440.[615] The Commission also estimates that one non-resident SB SEF would submit one amendment to Exhibit P to Form SB SEF per year, at an annual cost of $1,220.[616]

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[600] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden would be 500 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $198 for a senior accountant to meet these requirements, the one-time estimated dollar cost to register as a SB SEF would be $99,000 (500 hours × $198), or $1,980,000 ($99,000 × 20 SB SEFs) in the aggregate. The hourly rate for the senior accountant is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[601] $1,980,000 = $99,000 × 20 SB SEFs.

[602] $10,000,000 = $500,000 × 20 SB SEFs.

[603] *See also* Section XXVII.D.1.

[604] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden to comply with the financial statement requirements of Exhibit H to proposed Form SB SEF would be 40 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $198 for a senior accountant to meet these requirements, the one-time estimated dollar cost per SB SEF would be $7,920 (40 hours × $198), or $158,400 ($7,920 × 20 SB SEFs) in the aggregate. The hourly rate for the senior accountant is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[605] *See* 17 CFR 232.405.

[606] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden would be 54 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $224 for a programmer analyst to meet these requirements, the initial estimated dollar cost would be $12,096 (54 hours × $224), or $241,920 ($12,096 × 20 SB SEFs) in the aggregate. The hourly rate for the programmer analyst is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[607] $241,920 = $12,096 × 20 SB SEFs.

[608] $460,000 = $23,000 × 20 SB SEFs.

[609] $99,000 + $500,000 + $7,920 + $12,096 + $23,000 = $642,016.

[610] $12,840,320 = $642,016 × 20 SB SEFs.

[611] The Commission estimates that a SB SEF that is controlled by another person will assign these responsibilities to a compliance attorney. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the one-time estimated dollar cost for a SB SEF controlled by another person to comply with Exhibit P would be $1,220 ((1 hour × $320) + $900), or $24,400 ($1,220 × 20 SB SEFs controlled by other persons) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[612] The Commission estimates that a non-resident SB SEF will assign these responsibilities to a compliance attorney. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the one-time estimated dollar cost for a non-resident SB SEF to comply with Exhibit P would be $1,220 ((1 hour × $320) + $900). This would also be the aggregate initial cost as the Commission has estimated that only one non-resident person would seek to register as a SB SEF. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[613] $13,505,940 = $640,000 (costs other than Exhibits F, H and P to Form SB SEF) + $12,840,320 (costs relating to Exhibits F and H to Form SB SEF) + $24,400 (costs relating to Exhibit P to Form SB SEF for SB SEFs controlled by other persons) + $1,220 (costs relating to Exhibit P to Form SB SEF for all non-resident SB SEFs).

[614] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to prepare and file rule amendments and the annual update to Form SB SEF would be 150 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $48,000 (150 hours × $320), or $960,000 ($48,000 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[615] The Commission estimates that a SB SEF that is controlled by another person will assign these responsibilities to a compliance attorney. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost for a SB SEF controlled by another person to amend Exhibit P would be $1,220 ((1 hour × $320) + $900), or $2,440 in the aggregate ($1,220 × 2 (estimated number of SB SEFs controlled by other persons required to amend Exhibit P per year) × 1 amendment). The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[616] The Commission estimates that a non-resident SB SEF will assign these responsibilities to a compliance attorney. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost for a non-resident SB SEF to amend Exhibit P would be $1,220 ((1 hour × $320) + $900). This would also be the aggregate annual cost as the Commission has

In addition, proposed Rule 804 would impose costs on SB SEFs seeking to withdraw registration. The Commission estimates that one SB SEF would seek to withdraw its registration per year. Therefore, the Commission estimates that the aggregate annual estimated dollar cost for SB SEFs seeking to withdraw registration would be $320.[617]

Finally, proposed Rule 803 would impose costs on SB SEFs to prepare and file supplemental information with the Commission. The Commission estimates that the average annual cost for a SB SEF to prepare and file such supplemental information would be $2,400 for each SB SEF, or $48,000 in the aggregate.[618]

Thus, the Commission estimates that the total annual aggregate cost of making all required filings related to Form SB SEF would be approximately $1,011,980.[619]

The Commission solicits comments on the costs associated with the registration related rules and new Form SB SEF and exhibits. The Commission specifically requests comment on initial costs associated with completing the registration form and ongoing annual costs of completing the required periodic and annual amendments. Please describe and, to the extent practicable, quantify the costs associated with any comments that are submitted. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from proposed Regulation SB SEF's registration requirements?
- What are the costs currently borne by entities covered by the proposed registration requirements that may have been included in the Commission's analysis?
- Are there additional costs involved in complying with the registration requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having comprehensive and accurate registration of SB SEFs, which would provide access to such information to the Commission and other regulators?
- Would there be additional benefits from the proposed registration requirements that have not been identified?

Rules Generally. The Commission estimates that the initial cost for SB SEFs to comply with the rule writing requirements of Regulation SB SEF, including to establish and submit the rules to the Commission, would be $73,600 for each SB SEF, for an aggregate initial cost of $1,472,000.[620] The estimated cost would include the time expended for drafting the rules, and for review of the draft rules, policies or procedures by the SB SEF's senior management.

The Commission notes that a SB SEF may choose to refine the rules, policies or procedures that it would establish in connection with the requirements of Regulation SB SEF. Once a SB SEF has drafted the written rules, policies and procedures it is required to establish pursuant to Regulation SB SEF, the Commission estimates that it would cost a SB SEF approximately $38,400 annually to update its rules, for an aggregate estimated ongoing annual cost for all SB SEFs of approximately $768,000.[621]

The Commission requests comment on the costs and benefits of the proposed rule writing requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. The Commission requests comment on the costs and benefits of the proposed registration requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed rule writing requirements of Regulation SB SEF?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed rule writing requirements?
- Are there additional costs involved in complying with the rule writing requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having a comprehensive and accurate rule writing requirement for SB SEFs, which would provide access to such information to the Commission and other regulators?
- Would there be additional benefits from the proposed rule writing requirements that have not been identified?

Reporting. The Commission estimates that the annual cost for SB SEFs to comply with the reporting requirements of Regulation SB SEF would be $387,200 per SB SEF, for an aggregate annual cost of $7,744,000.[622] Further,

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estimated that only one non-resident person would seek to register as a SB SEF, and that such non-resident SB SEF will only file one amendment to Exhibit P per year. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[617] The Commission preliminarily estimates, for purposes of its PRA, that the average burden for a SB SEF to withdraw its registration would be 1 hour. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the estimated dollar cost to withdraw the registration of a SB SEF would be $320 (1 hour × $320). This would also be the aggregate annual cost as the Commission has estimated that only one SB SEF would seek to withdraw its registration as a SB SEF per year. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[618] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to prepare and file supplemental information would be 7.5 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the estimated annual dollar cost would be $2,400 (7.5 hours × $320), or $48,000 ($2,400 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[619] $1,011,980 = $960,000 + $2,440 + $1,220 + $320 + $48,000.

[620] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden to comply with the rule-writing requirements of Regulation SB SEF would be 230 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the initial estimated dollar cost would be $73,600 (230 hours × $320), or $1,472,000 ($73,600 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[621] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to comply with the rule-writing requirements of Regulation SB SEF would be 120 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $38,400 (120 hours × $320), or $768,000 ($38,400 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[622] The Commission preliminarily estimates, for purposes of its PRA, that the average annual costs comply with the reporting requirements of Regulation SB SEF would be 1,210 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these

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the Commission estimates the total cost of hiring outside legal counsel to review an international information sharing agreement to be $4,000 per SB SEF, for an aggregate cost of approximately $80,000[623] for all SB SEFs. In addition, the Commission estimates the total annual cost of hiring an objective, external firm to review internal audits to be $90,000 per SB SEF, for an aggregate cost of approximately $1,800,000[624] for all SB SEFs. Thus, the estimated aggregate total annual costs associated with reporting requirements for all SB SEFs would be approximately $9,624,000.[625]

The Commission estimates that the annual cost for SB SEF participants to comply with the reporting requirements of Regulation SB SEF would be $32,000 per SB SEF participant, for an aggregate annual cost of $8,800,000.[626]

The Commission requests comment on the costs and benefits of the proposed reporting requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from proposed reporting requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed reporting requirements?
- Are there additional costs involved in complying with the reporting requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having comprehensive and accurate reporting requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?
- Would there be additional benefits from the proposed reporting requirements that have not been identified?

Recordkeeping. The Commission estimates that the annual cost for SB SEFs to comply with the recordkeeping requirements of proposed Rule 818(a)–(b) would be similar to the annual cost for national securities exchanges to comply with comparable rules. The Commission estimates that the annual cost would be $16,000 per SB SEF, for an aggregate annual cost of $320,000.[627] This figure includes, but is not limited to, the annual hourly burden to generate, collect, organize and preserve all of the documents and other records required under proposed Rule 818(a) and (b).

In addition, proposed Rule 818(c) would require a SB SEF to keep certain records with respect to trading activity on and through the SB SEF. Specifically, a SB SEF must make and keep accurate, time-sequenced records of all inquiries, responses, orders, quotations, other trading interest and transactions that are received by, originated on, or executed on the SB SEF. The Commission estimates that the annual cost to comply with this requirement would be $41,600 per SB SEF, for an aggregate annual cost of $832,000.[628]

The Commission preliminarily estimates that a SB SEF could incur a one-time cost to set up or modify an existing recordkeeping system to comply with proposed Rule 818. Based on the Commission's experience with recordkeeping costs, and consistent with prior cost estimates for similar recordkeeping provisions,[629] the Commission estimates that setting up or modifying a recordkeeping system would cost $106,680 per SB SEF, for an aggregate total of $2,133,600.[630]

Additionally, the Commission preliminarily estimates that each SB SEF may have a one-time burden to upgrade its existing systems to ensure that the audit trail component of its systems complies with proposed Rule 818(c). Based on industry sources, the Commission preliminarily believes that this work would be done internally by two programmers over the course of approximately four weeks. The Commission preliminarily estimates that it would cost a total of $97,280 per SB SEF, or $1,945,600 in the aggregate for all SB SEFs.[631]

As discussed above, proposed Rule 809(d) would require a SB SEF that permits non-registered ECPs to be participants in the SB SEF to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Based on conversations with industry

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requirements, the annual estimated dollar cost would be $387,200 (1,210 hours × $320), or $7,744,000 ($387,200 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[623] $80,000 = $4,000 × 20 SB SEFs.

[624] $1,800,000 = $90,000 × 20 SB SEFs.

[625] $9,624,000 = $7,744,000 + $80,000 + $1,800,000.

[626] The Commission preliminarily estimates, for purposes of its PRA, that the average annual costs to comply with the reporting requirements of Regulation SB SEF would be 100 hours per SB SEF participant, with an estimated 275 SB SEF participants in total for a total of 27,500 hours. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $32,000 (100 hours × $320), or $8,800,000 ($32,000 × 275 SB SEF participants) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[627] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to comply with the recordkeeping requirements of proposed Rule 818(a)–(b) would be 50 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $16,000 (50 hours × $320), or $320,000 ($16,000 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[628] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to comply with the recordkeeping requirements of proposed Rule 818(c) would be 130 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $41,600 (130 hours × $320), or $832,000 ($41,600 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[629] *See* Securities Exchange Act Release No. 59342 (February 2, 2009); 74 FR 6456 (February 9, 2009) (Amendments to Rules for Nationally Recognized Statistical Rating Organizations) ("NRSRO Adopting Release").

[630] The Commission estimates it would take 345 hours for a senior programmer to set up or modify a recordkeeping system for a cost of $104,880 per SB SEF (345 hours × $304), or $2,097,600 ($104,880 × 20 SB SEFs). In addition, the Commission estimates a cost of $1,800 per SB SEF in information technology expenses to purchase recordkeeping software for a total initial cost of $36,000 for all SB SEFs. The total costs would be $106,680 ($104,880 + $1,800) per SB SEF or a total of $2,133,600 ($106,680 × 20 SB SEFs) for all SB SEFs. The hourly rate for the senior programmer is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[631] The Commission estimates that it would take 160 hours for two senior programmers to set up or modify a recordkeeping system for a cost of $97,280 per SB SEF (160 hours × 2 programmers × $304), or $1,945,600 ($97,280 × 20 SB SEFs) for all SB SEFs. The hourly rate for the senior programmer is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

sources, the Commission preliminarily believes that the majority of entities that would seek to become SB SEFs already would have risk management systems and supervisory procedures and controls to protect the integrity of their business and to comply with other requirements already specified and accounted for herein. The Commission also believes that only a small number of entities would have to establish completely new systems and procedures to comply with the requirement of proposed Rule 809(d).

The Commission estimates that each SB SEF would spend an average of $68,400 to modify its risk management systems to bring them into compliance with the proposed Rule for a total one-time cost of $1,368,000 for all SB SEFs combined,[632] and a total annual ongoing burden of $1,048,800 on all SB SEFs to maintain their systems.[633] The Commission preliminarily believes that proposed Rule 809(d) also would impose a one-time legal and compliance cost of $330,300 on all SB SEFs to comply with the requirement to establish, document, and maintain compliance policies and supervisory procedures,[634] and an annual cost of $482,700 on all SB SEFs to review their written compliance policies and supervisory procedures.[635]

Therefore, the Commission preliminarily estimates that the total one-time burden for all SB SEFs to comply with the collection of information requirements of proposed Rule 809(d) would be $1,698,300,[636] and the total annual burden for all SB SEFs to comply with the proposed Rule would be $1,531,500.[637]

The Commission requests comment on the costs and benefits of the proposed recordkeeping requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed recordkeeping requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed recordkeeping requirements?
- Are there additional costs involved in complying with the recordkeeping requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having comprehensive and accurate recordkeeping requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?
- Are the Commission's estimates concerning what it would cost to implement and maintain technology systems to comply with the recordkeeping requirements accurate? If not, what would the costs, in both time and dollar figures, be? Please provide data.
- Would there be additional benefits from the proposed recordkeeping requirements that have not been identified?

Publication of Trading Information. For the requirement in proposed Rule 817(a) that a SB SEF have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SB swaps executed on or through the SB SEF, the Commission preliminarily estimates that a SB SEF would incur a one-time cost of $92,416 per SB SEF, or $1,848,320 in the aggregate.[638]

The Commission requests comment on the costs and benefits of the requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed publication of trading information requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed publication of trading information requirements?
- Are there additional costs involved in complying with the publication of trading information requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having these requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?

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[632] The Commission preliminarily estimates, for purposes of its PRA, that the average one-time cost to comply with proposed Rule 809(d) would require one senior programmer working 225 hours. *See supra* Section XXVII. Assuming an hourly cost of $304 for a senior programmer the one-time cost would be $68,400 (225 hours × $304), or $1,368,000 ($68,400 × 20) in the aggregate. The hourly rate for the senior programmer is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[633] The Commission preliminarily estimates, for purposes of its PRA, that the ongoing cost to comply with proposed Rule 809(d) would require one senior programmer working 172.5 hours annually. *See supra* Section XXVII. Assuming an hourly cost of $304 for a senior programmer, the cost would be $52,440 (172.5 hours × $304), or $1,048,800 ($52,440 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[634] The Commission preliminarily estimates, for purposes of its PRA, that the average one-time cost to comply with proposed Rule 809(d) would require one compliance attorney and one compliance manager to spend 7.5 hours each to evaluate appropriate access thresholds. The Commission also preliminarily estimates that one compliance attorney and one compliance manager would each require approximately 15 hours, and the CCO would require approximately 7.5 hours, to set up or modify compliance policies and procedures to comply with the proposed rule. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney, $423 for the CCO, and $273 for a compliance manager the cost for each SB SEF would be $16,515 = 7,200 (22.5 hours × $320) + $3,172.5 (7.5 hours × $423) + $6,142.5 (22.5 hours × $273), for a total of $330,300 for all SB SEFs ($16,515 × 20). The hourly rate for the compliance attorney, compliance manager and CCO are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[635] The Commission preliminarily estimates, for purposes of its PRA, that the ongoing cost to comply with proposed Rule 809(d) would require an average of 30 hours per year for each of an compliance attorney and compliance manager, and 15 hours per year for the CCO, to review and document their written compliance policies and supervisory procedures. Assuming an hourly cost of $320 for a compliance attorney, $423 for the CCO, and $273 for a compliance manager, the cost for each SB SEF would be 24,135 = $9,600 (30 hours × $320) + $6,345 (15 hours × $423) + $8,190 (30 hours × $273), for a total of $482,700 for all SB SEFs ($24,135 × 20 SB SEFs). The hourly rate for the compliance attorney, compliance manager and CCO are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[636] $1,698,300 = $1,368,000 + $330,300. *See supra* notes 632 and 634 (discussing the average one-time costs to comply with Rule 809(d)).

[637] $1,531,500 = $1,048,800 + $482,700. *See supra* notes 633 and 635 (discussing the ongoing costs to comply with Rule 809(d)).

[638] The Commission preliminarily estimates, for purposes of its PRA, that the average one-time cost to comply with proposed Rule 817(a) would require two senior programmers working 160 hours, for a total of 320 hours. *See supra* Section XXVII. Assuming an hourly cost of $304 for a senior programmer, the one-time cost would be $92,416 (320 hours × $304), or $1,848,320 ($92,416 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer and programmer analyst are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

• Would there be additional benefits from the proposed publication of trading information requirements that have not been identified?

Composite Indicative Quote and Executable Bids and Offers. For the two requirements: (1) The requirement in proposed Rule 811(e) that a SB SEF operating a RFQ platform create and disseminate through the SB SEF a composite indicative quote, made available to all participants, for SB swaps traded on or through the SB SEF; and (2) the requirement imposed by the Commission's proposed interpretation of the definition of SB SEF that each SB SEF, at a minimum, provide any participant with the ability to make and display executable bids or offers accessible to all participants on the SB SEF, if the participant wishes to do so, the Commission preliminarily estimates that a SB SEF would incur a one-time cost of $21,120 per SB SEF, or $422,400 in the aggregate.[639] Further, the Commission preliminarily estimates that each SB SEF would incur a recurring annual cost of $11,200 to monitor and update its systems to determine if its composite indicative quote and executable bid and offer functionalities operate appropriately.[640]

The Commission requests comment on the costs and benefits of collecting and disseminating a composite indicative quote and of allowing participants to disseminate executable bids and offers discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

• How can the Commission most accurately estimate the costs and benefits arising from the proposed requirements to collect and disseminate a composite indicative quote and executable bids and offers?

• What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed dissemination of a composite indicative quote?

• Are there additional costs involved in complying with the requirements to collect and disseminate a composite indicative quote and providing the ability for participants to disseminate executable bids and offer that have not been identified? What are the types, and amounts, of the costs?

• Can commenters assess the benefits of collecting and disseminating a composite indicative quote for SB SEFs and of SB SEFs providing participants the ability to disseminate executable bids and offers?

Rule and Product Filings. The Commission estimates that the annual cost for SB SEFs to comply with the proposed rule and product filing requirements of proposed Rules 805 through 808 would be $75,200 per SB SEF, for an aggregate annual cost of $1,504,000.[641] These estimated costs entail preparing, reviewing and submitting the filings to the Commission. Based on the Commission staff's consultation with CFTC staff, the Commission believes that SB SEFs would handle the rule and product filing processes internally.

The Commission requests comment on the costs and benefits of the proposed rule and product filing requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

• How can the Commission most accurately estimate the costs and benefits arising from the proposed rule and product filing requirements?

• What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed rule and product filing requirements?

• Are there additional costs involved in complying with the rule and product filing requirements that have not been identified? If so, what are the types, and amounts, of such costs?

• Can commenters assess the benefits of having comprehensive and accurate rules and product filing requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?

• Would there be additional benefits from the proposed rule and product filing requirements that have not been identified?

Chief Compliance Officer. The Commission estimates that the initial cost for SB SEFs to comply with the CCO requirements of proposed Rule 823(b)(6) and (7), which relate to the handling of noncompliance issues, would be $91,200 per SB SEF, for an aggregate annual cost of $1,824,000.[642] A CCO also would be required under proposed Rule 823(c) and (d) to prepare and submit an annual compliance report to the Commission and to the SB SEF's Board. The Commission estimates that the annual cost for SB SEFs to comply with this requirement is $29,440 per SB SEF, for an aggregate annual cost of $588,800.[643] Proposed Rule 823(e)(1)

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[639] The Commission preliminarily estimates, for purposes of its PRA, that the average one-time cost to comply with the above requirements would require one senior programmer and one programmer analyst working 40 hours each. *See supra* Section XXVII. Assuming an hourly cost of $304 for a senior programmer and $224 for a programmer analyst, the one-time cost would be $21,120 ((40 hours × $304) + (40 hours × $224)), or $422,400 ($21,120 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer and programmer analyst are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[640] The Commission preliminarily estimates, for purposes of its PRA, that the average annual cost to comply with the above requirements would require one programmer analyst working 50 hours. *See supra* Section XXVII. Assuming an hourly cost of $224 for a programmer analyst the one-time cost would be $11,200 (50 hours × $224), or $224,000 ($11,200 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer and programmer analyst are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[641] Based on the Commission staff's consultation with CFTC staff, the Commission preliminarily estimates for purposes of its PRA that the average annual burden to comply with the rule filing requirements of Rules 805 and 806 would be 150 hours, and the average annual burden to comply with the product filing requirements of Rules 807 and 808 would be 85 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $75,200 (235 hours × $320), or $1,504,000 ($75,200 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[642] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden to comply with the CCO requirements of proposed Rule 823(b)(6) and (7) would be 160 hours. Also, due to the novel nature of the CCO requirements in the SB SEF industry and the new requirements under the Dodd-Frank Act, the Commission estimates that there would be an initial one-time burden of $40,000 per SB SEF in outside legal costs. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $51,200 (160 hours × $320) plus $40,000, for a total of $91,200, or $1,824,000 ($91,200 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[643] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden to comply with the CCO requirements of proposed Rule 823(c) and (d) would be 92 hours. *See supra* Section XXVII. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the annual estimated dollar cost would be $29,440 (92 hours × $320) or $588,800 ($29,440 × 20 SB SEFs) in the aggregate. The hourly rate for the compliance attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to

and (2) and Exhibits F and H to proposed Form SB SEF also require the CCO to submit an annual financial report. Based on conversations with operators of current trading platforms and the Commission's experience with entities of similar size, the Commission preliminarily estimates that each SB SEF would incur, on average, a cost of $99,500 to complete the reports,[644] and a cost of $500,000 for independent public accounting services. In the aggregate, these costs are estimated to be $1,980,000 and $10,000,000, respectively.[645] The Commission also estimates that it would cost approximately $7,920 per respondent to compile, review, and submit the financial reports for certain affiliated entities or $158,400 in the aggregate.[646] However, all of these reports would need to be provided in XBRL, as required by Rules 405(a)(1), (a)(3), (b), (c), (d) and (e) of Regulation S–T.[647] This would create an additional cost for SB SEFs. The Commission preliminarily estimates, based on its experience with other data tagging initiatives, that these requirements would add an additional cost on average of approximately $12,096[648] and $23,000 in outside software and other costs per respondent, or $241,920 and $460,000 in the aggregate, respectively. Thus, the Commission estimates a total initial cost of approximately $762,656 per respondent[649] and $15,253,120 in the aggregate for all respondents.[650]

The Commission requests comment on the costs and benefits of the proposed CCO requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed CCO requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the cost of the proposed CCO requirements?
- Are there additional costs involved in complying with the CCO requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having comprehensive and accurate CCO requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?
- Would there be additional benefits from the proposed CCO requirements that have not been identified?

Conflicts of Interest. As described above, proposed Rule 820 sets forth certain governance arrangements that would be required of SB SEFs. A SB SEF may need to revise the composition of its Board, if the Board currently is not composed of at least 20% SB SEF participants. A SB SEF could comply with the 20% participant director requirement by decreasing the size of its Board and allowing some non-participant directors to resign, maintaining the current size of its Board and replacing some non-participant directors with participant directors, or by increasing the size of its Board and electing additional participant directors. In any event, unless a SB SEF currently complies with proposed Rule 820, it would incur the cost of adding new directors or replacing existing directors. A SB SEF may also need to design or modify its governance processes to preclude any participant, either alone or together with its related persons, that beneficially owns an interest in the SB SEF from dominating or exercising disproportionate influence in the selection of participant directors, if such participant could thereby dominate or exercise disproportionate influence in the selection or appointment of the entire Board. The Commission estimates a cost per SB SEF of $4,800, or $96,000 in the aggregate for all SB SEFs to revise the relevant governing documents.[651]

A SB SEF may also need to revise the composition of its Board to include at least one director that is representative of investors who are not SB swap dealers or major SB swap participants, and are not associated with a participant. In this regard, SB SEFs could face difficulties in locating qualified individuals to serve as investor directors, particularly because SB swaps trading is complex and some potential candidates may decline to serve as a director if they believe that they lack sufficient expertise. There could also be costs in educating investor directors to become familiar with the manner in which SB swaps are traded and the overall market for SB swaps, as well as the new regulatory structure that would govern them, which could slow Board or committee processes at least initially.

The Commission preliminarily believes that the cost of securing an investor director to serve on the Board of the SB SEF could range from a relatively low cost for those entities that have the contacts and resources to be able to search for one or more investor directors on their own; to a moderate cost for those entities that can undertake the search on their own but would incur some expenditures, such as placing advertisements in national media; to a higher cost for those entities that must secure the services of a recruitment firm that specializes in the placement of outside directors. The Commission preliminarily estimates that those SB SEFs that must rely on a recruitment specialist could incur a cost of approximately $68,000 per director,[652]

account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[644] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden would be 500 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $198 for a senior accountant to meet these requirements, the one-time estimated dollar cost to register a SB SEF would be $99,000 (500 hours × $198), or $1,980,000 ($99,000 × 20 SB SEFs) in the aggregate. The hourly rate for the senior accountant is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[645] *Id. See also* Section XXVII.D.1.

[646] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden would be 40 hours per SB SEF. *See* supra Section XXVII. Assuming an hourly cost of $198 for a senior accountant to meet these requirements, the one-time estimated dollar cost per SB SEF would be $7,920 (40 hours × $198), or $158,400 ($7,920 × 20 SB SEFs) in the aggregate. The hourly rate for the senior accountant is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[647] *See* 17 CFR 232.405.

[648] The Commission preliminarily estimates, for purposes of its PRA, that the average initial burden would be 54 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $224 for a programmer analyst to meet these requirements, the initial estimated dollar cost would be $12,096 (54 hours × $224), or $241,920 ($12,096 × 20 SB SEFs) in the aggregate. The hourly rate for the programmer analyst is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[649] $762,656 = $91,200 + $29,440 + $99,000 + $500,000 + $7,920 + $12,096 + $23,000.

[650] $15,253,120 = 20 (number of SB SEFs) × $762,656.

[651] The Commission preliminarily estimates, for purposes of its PRA, that it would take a compliance attorney approximately 15 hours to revise the relevant governing documents. Assuming an hourly cost of $320 for a compliance attorney to meet these requirements, the one-time estimated dollar cost would be $4,800 (15 hours × $320) or $96,000 ($4,800 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer and programmer analyst are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[652] The Commission is basing this estimate on a recent study noting that the retainer fee for outside

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or $1,360,000 in the aggregate, if all SB SEFs utilized a recruitment firm.[653]

The Commission requests comment on the costs and benefits of the proposed conflicts requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed conflicts requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed conflicts requirements?
- Are there additional costs involved in complying with the governance requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having governance requirements for SB SEFs?
- Would there be additional benefits from the proposed conflicts requirements that have not been identified?

Surveillance. The Commission preliminarily estimates that establishing an automated surveillance system in compliance with proposed Rules 811 and 813 would require an initial cost of $3,256,800 per SB SEF, or $65,136,000 in the aggregate. The initial cost per SB SEF includes $1,756,800 in initial programming costs per SB SEF[654] as well as a one-time capital expenditure per SB SEF of $1.5 million in information technology costs that would be necessary to establish such a system. This capital expenditure estimate is based on the Commission's discussions with market participants currently operating platforms that trade OTC swaps.

The Commission preliminarily estimates that the ongoing annual costs associated with the automated surveillance system required by proposed Rules 811 and 813 would be $1,306,400 per SB SEF, or $26,128,000 in the aggregate. The annual cost per SB SEF includes $806,400 in annual programming costs per SB SEF[655] as well as an ongoing annual information technology cost of $500,000 per SB SEF.

The Commission requests comment on the costs and benefits of the proposed surveillance system requirements discussed above, as well as any costs and benefits not already described that could result. The Commission also requests data to quantify any potential costs or benefits. In addition, the Commission requests comment on the following:

- How can the Commission most accurately estimate the costs and benefits arising from the proposed surveillance system requirements?
- What are the costs currently borne by entities that may have been included in the Commission's analysis of the costs of the proposed surveillance system requirements?
- Are there additional costs involved in complying with the surveillance system requirements that have not been identified? If so, what are the types, and amounts, of such costs?
- Can commenters assess the benefits of having comprehensive and accurate surveillance system requirements for SB SEFs, which would provide access to such information to the Commission and other regulators?
- Would there be additional benefits from the proposed surveillance system requirements that have not been identified?

D. General Request for Comments on Regulation SB SEF

- The Commission requests comment on any other aspect of the costs and benefits associated with Regulation SB SEF.
- Would the obligations imposed on reporting parties by proposed Regulation SB SEF be a significant enough barrier to entry to cause some firms not to enter the SB swaps market? If so, how many firms might decline to enter the market? How can the cost of their not entering the market be tabulated? How should the Commission weigh such costs, if any, against the anticipated benefits from increased transparency to the SB swaps market from the proposal, as discussed above?
- How many entities would be affected by proposed Regulation SB SEF?

XXIX. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[656] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[657] requires the Commission, when adopting rules under the Exchange Act, to consider the impact of any such rules on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[658]

The Commission preliminarily believes that the regulation of SB SEFs, as required by the Dodd-Frank Act and proposed to be implemented under Regulation SB SEF, would promote efficiency, competition, and capital formation.

Promotion of Efficiency. The Commission preliminarily believes that the regulation of SB SEFs, as required by the Dodd-Frank Act and proposed to be implemented under Regulation SB SEF, would promote efficiency by encouraging innovation, automation, and reduction of informational asymmetries.

directors is on average $67,624 (rounded to $68,000). *See http://www.hewittassociates.com/_MetaBasicCMAssetCache_/Assets/Articles/2010/2010_Outside_Director_Compensation.pdf*. The Commission believes that this amount could serve as a proxy for the amount of any fee to be charged by a recruitment firm that would conduct a national search for a director that meets the requirements of proposed Rule 820(c)(2).

[653] $1,360,000 = 20 (number of SB SEFs) × $68,000.

[654] The Commission preliminarily estimates, for purposes of its PRA, that establishing an automated surveillance system would require one senior programmer and three additional programmers working for 1,800 hours each to create and implement such a system. *See supra* Section XXVII. Assuming an hourly cost of $304 for a senior programmer and $224 for a programmer analyst to meet these requirements, the initial estimated dollar cost would be $1,756,800 = (1,800 hours × $304) + ((1,800 hours × $224) × 3), or $35,136,000 ($1,756,800 × 20 SB SEFs) in the aggregate. The hourly rate for the senior programmer and programmer analyst are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[655] The Commission preliminarily estimates, for purposes of its PRA, that the average annual burden to comply with the automated surveillance system requirements of proposed Rules 811 and 813 would require two programmer analysts working for 1,800 hours per SB SEF. *See supra* Section XXVII. Assuming an hourly cost of $224 for a programmer analyst to meet these requirements, the initial estimated dollar cost would be $806,400 (1,800 hours × $224 × 2), or $16,128,000 ($806,400 × 20 SB SEFs) in the aggregate. The hourly rate for the programmer analyst is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010,* modified by the Commission's staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[656] 15 U.S.C. 78c(f).

[657] 15 U.S.C. 78w(a)(2).

[658] *Id.*

The proposed rules are designed to be flexible and to foster innovation in the SB swaps market, particularly with respect to the trading of SB swaps by a diverse group of market participants. The Commission formulated the proposed rules, along with the proposed interpretation of the definition of SB SEF in a manner that would allow entities that seek to become SB SEFs to structure diverse platforms for the trading of SB swaps, subject to certain baseline requirements. These proposed baseline requirements are meant to permit access by a wide group of market participants to a range of SB swaps in keeping with the mandate of the Dodd-Frank Act. Thus, the Commission believes that the trading of SB swaps could evolve to its most efficient structure while also meeting the statutory and regulatory requirements relating to such activity.

The Commission preliminarily believes that the proposed requirements with respect to pre-trade price transparency could lead to more efficient pricing in the SB swaps market. The proposed rules are designed to result in an increase in pre-trade price transparency for SB swaps, which should aid market participants in evaluating current market prices for SB swaps, thereby furthering more efficient price discovery. Price transparency, coupled with the potential increase in the number of market participants with access to trading in SB swaps, could further decrease the spread in quoted prices, and thus could lead to higher efficiency in the trading of these securities.

Some industry participants, however, have expressed concerns to the Commission that pre-trade price transparency could force market participants to reveal more information about trading interest than they believe would be economically desirable. To the extent that market participants consider that pre-trade price transparency requirements are too burdensome and choose not to participate in the market, thereby foregoing any potential economic benefits that may have resulted from purchasing a particular SB swap, market efficiency could be harmed for less liquid instruments and for large blocks of SB swaps.

The Commission preliminarily believes that automation and systems development that would be associated with the regulation of SB SEFs, as required by proposed Regulation SB SEF, would provide market participants with new platforms and tools to execute and process transactions in SB swaps, which could result in lower trading costs and thus could lead to more efficient trading of SB swaps.

The Commission also believes that the proposed exemptions for SB SEFs from regulation as national securities exchanges or as brokers would eliminate what would be largely an additive oversight of SB SEFs and therefore would promote efficiency, because SB SEFs would not have to expend resources to comply with these regulatory obligations from which they would be exempt.

Promotion of Competition. The Commission preliminary believes that the regulation of SB SEFs, as required by the Dodd-Frank Act and proposed to be implemented under Regulation SB SEF, could promote competition. The proposed rules that would require SB SEFs to establish fair, objective and not unreasonably discriminatory standards for granting impartial access to trading on the SB SEF would foster greater access to SB SEFs by SB swap dealers, major SB swap participants, brokers, and ECPs. The resulting increase in the number of participants who could access venues for the trading of SB swaps would allow a range of market participants to compete for business on the SB SEF through price competition or other dimensions of service. The proposed pre-trade transparency requirements, including the proposed requirement to create and disseminate a composite indicative quote, could further promote price competition by making available information about trading interest before execution of the trade, thereby allowing participants to improve upon current quotes.

The Dodd-Frank Act's mandate to bring SB swaps that are subject to the mandatory clearing requirement and that are made available to trade onto regulated markets as well as the proposed interpretation of the definition of SB SEF, and proposed Regulation SB SEF that are intended to further implement the statutory directive, should help foster greater competition in the trading of SB swaps. The trading of SB swaps on regulated markets, and the Commission's proposals to institute rules for such trading, should allow diverse trading platforms or systems to register as SB SEFs and to compete for business in the SB swap market.

The Commission proposes to initially permit temporary registration of SB SEFs while it considers each applicant's full registration application, as long as the applicant meets certain requirements for temporary registration. This proposed temporary registration should help alleviate burdens associated with starting up a SB SEF and promote competition by reducing barriers to entry, because entry into the SB swap market would not be delayed by procedural matters, such as the timing of Commission review of the applicant's full registration submission. In addition, the Commission would have the opportunity to observe the SB SEF in operation before it grants permanent registration to the SB SEF, thereby helping to ensure that the SB SEF promotes desirable competition.

Promotion of Capital Formation. The Commission preliminary believes that the regulation of SB SEFs, as required by the Dodd-Frank Act and as proposed to be implemented under Regulation SB SEF, would promote capital formation because the proposed interpretation of the definition of SB SEF, along with the elements of proposed Rule 811 that relate to pre-trade price transparency, are intended to provide a flexible approach as to the parameters of what can be traded on a SB SEF. As a result, entities that currently provide a platform or system for OTC derivatives trading should be able to leverage off of their current trading platforms when developing a SB SEF-compatible trading platform. These entities would have various options available to them when developing their systems or platforms to comply with the Commission's proposed rulemaking. This flexible feature of the proposals should help promote capital formation because resources would be invested in a more efficient manner to improve upon or expand the features of those that plan to register as a SB SEF.

In addition, proposed Regulation SB SEF would provide the Commission with information relating to trading, recordkeeping, and surveillance of SB SEFs, as well as access to the books and records of SB SEFs. A well-regulated SB swap market, where the Commission has access to information about SB swap transactions, would increase the Commission's ability to assess risks in the SB swap market. In addition, the proposals would provide for various safeguards to help promote market integrity, including proposed Rule 809 relating to access to the SB SEF and proposed Rule 822 relating to systems safeguards. Proposed Regulation SB SEF also is intended to support the statutorily-mandated regulatory obligations of SB SEFs through proposed Rule 823 relating to the duties of the CCO, among other proposed rules. Any resulting increase in market integrity would likely increase market participants' confidence in the soundness and fairness of the SB swap market. Such increased confidence likely would stimulate financial investment in SB swaps by corporate

entities and others that may find that more transparent venues for the trading of SB swaps would allow them to purchase SB swaps to offset business risks and to meet hedging objectives. Further, to the extent that market participants utilize SB swaps to better manage portfolio risks with respect to positions in underlying securities, the extent that they are willing to participate in the SB swap market may impact their willingness to participate in the underlying asset's market. Therefore, the Commission preliminarily believes that the proposed rules would help encourage capital formation.

Burden on Competition. Based on discussions with industry participants, the Commission preliminarily believes that the start-up costs to become a SB SEF for those entities that currently own and/or operate a platform for the trading of OTC swaps would be moderate. According to these industry participants, any needed modifications to their systems or operations as a result of the Commission's proposals generally would entail the expenditure of resources chiefly on regulatory and compliance matters and on enhancing electronic systems to support both the operational and regulatory aspects of a SB SEF. A trading platform that currently trades OTC swaps would need to make some adjustments to its systems and structure to trade SB swaps in compliance with proposed Regulation SB SEF. The Commission preliminarily believes that the development and registration of, and introduction of trading in SB swaps by, a SB SEF would result in some barriers to entry that otherwise would not exist. This is particularly the case because, prior to the enactment of the Dodd-Frank Act, there were no statutory provisions mandating the trading of certain SB swaps on regulated markets.

The Commission requests comment on all aspects of this analysis and, in particular, on whether proposed Regulation SB SEF and the proposed interpretation of the definition of SB SEF would place a burden on competition, as well as the effect of the proposals on efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

XXX. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," the Commission must advise the OMB as to whether proposed Regulation SB SEF constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) a significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of proposed Regulation SB SEF on the economy on an annual basis, on the costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

XXXI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act ("RFA") [659] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [660] of the Administrative Procedure Act,[661] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." [662] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have a significant economic impact on a substantial number of small entities.[663]

A. Security-Based Swap Execution Facilities

The proposed rules and form under Regulation SB SEF would apply to all entities that seek to register with the Commission as a SB SEF and thus to operate as a SB SEF in compliance with Regulation SB SEF. In the Dodd-Frank Act, Congress defined for the first time the scope of a SB SEF and mandated the registration of these new entities. Based on its understanding of the market and conversations with industry sources, the Commission preliminarily believes that approximately 20 SB SEFs could be subject to the requirements of proposed Regulation SB SEF.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1i) When used with reference to an "issuer" or a "person," other than an investment company, an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less,[664] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[665] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[666] Under the standards adopted by the Small Business Administration ("SBA"), entities in financial investments and related activities [667] are considered small entities if they have $7 million or less in annual receipts.

Based on the Commission's existing information about the SB swap market and the entities likely to register as SB SEFs, the Commission preliminarily believes that the entities likely to register as SB SEFs would not be considered small entities. The Commission preliminarily believes that most, if not all, of the SB SEFs would be large business entities or subsidiaries of large business entities, and that all SB SEFs would have assets in excess of $5 million and annual receipts in excess of $7,000,000. Therefore, the Commission preliminarily believes that none of the potential SB SEFs would be considered small entities.

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[659] 5 U.S.C. 601 *et seq.*

[660] 5 U.S.C. 603(a).

[661] 5 U.S.C. 551 *et seq.*

[662] Although Section 601(b) of the RFA defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term "small entity" for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[663] *See* 5 U.S.C. 605(b).

[664] *See* 17 CFR 240.0–10(a).

[665] *See* 17 CFR 240.17a–5(d).

[666] *See* 17 CFR 240.0–10(c).

[667] These entities would include firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. *See* SBA's Table of Small Business Size Standards, Subsector 523.

B. SB SEF Participants

The proposed rules under Regulation SB SEF also would impose requirements on participants of SB SEFs, *i.e.,* SB swap dealers, major SB swap participants, brokers and non-registered ECPs. Among other requirements relating to participants, SB SEFs would be required to establish and enforce rules that require its participants to maintain books and records of any trading interest, transaction, or position in any SB swap pertinent to their activity on the SB SEF and to provide prompt access to those books and records to the SB SEF and to the Commission. Based on conversations with industry sources, the Commission preliminarily believes that there could be a total of 275 persons that could become SB SEF participants and thus would thus be subject to the requirements of the proposed rules.[668]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an "issuer" or a "person," other than an investment company, an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $5 million or less,[669] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[670] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[671] Under the standards adopted by the SBA, small entities in the finance and insurance industry include the following: (1) For entities in credit intermediation and related activities,[672] entities with $175 million or less in assets or, (2) for non-depository credit intermediation and certain other activities,[673] $7 million or less in annual receipts; (3) for entities in financial investments and related activities,[674] entities with $7 million or less in annual receipts; (4) for insurance carriers and entities in related activities,[675] entities with $7 million or less in annual receipts; and (5) for funds, trusts, and other financial vehicles,[676] entities with $7 million or less in annual receipts.

Based on feedback from industry participants about the SB swap market, the Commission preliminarily believes that the entities that will be participants of SB SEFs, whether SB swap dealers, major SB swap participants, registered brokers or non-registered ECPs, would exceed the thresholds defining "small entities" set out above. Thus, the Commission believes it is unlikely that proposed Regulation SB SEF, as it would affect SB SEF participants, would have a significant economic impact on any small entity.

C. Certification

For the foregoing reasons, the Commission certifies that the proposed rules and form under Regulation SB SEF would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

XXXII. Statutory Authority and Text of Proposed Amendments

Pursuant to the Exchange Act, 15 U.S.C. 78a *et seq.,* and particularly, Sections 3, 6, 15, 19, 23(a), 30(b), 30(c) and 36 (15 U.S.C. 78c, 78f, 78o, 78s, 78w(a), 78dd(b), 78dd(c) and 78mm), thereof, and Section 763 of the Dodd-Frank Act (15 U.S.C. 78c–4), the Commission is proposing to adopt § 240.15a–12, Regulation SB SEF and Form SB SEF under the Exchange Act and to amend § 240.3a1–1 under the Exchange Act.

List of Subjects in 17 CFR Parts 240, 242 and 249

Securities, brokers, reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission is proposing to amend Title 17, Chapter II of the Code of the Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised and the following citation is added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq;* 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

§ 240.15a–12 also issued under 15 U.S.C. 78c–4.

* * * * *

2. Section 240.3a1–1 is amended by adding paragraph (a)(4) and revising paragraph (b) introductory text to read as follows:

§ 240.3a1–1 Exemption from the definition of "Exchange" under Section 3(a)(1) of the Act.

(a) * * *

(4) Is a security-based swap execution facility, as that term is defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)), that:

(i) Is in compliance with Regulation SB SEF (17 CFR 242.800 through 242.823); and

(ii) Does not serve as a marketplace for transactions in securities other than security-based swaps.

(b) Notwithstanding paragraph (a)(1), (a)(2), or (a)(3) of this section, an organization, association, or group of persons shall not be exempt under this section from the definition of "exchange," if:

* * * * *

3. Add § 240.15a–12 to read as follows:

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[668] *See supra* Section XXVII.C.

[669] *See* 17 CFR 240.0–10(a).

[670] *See* 17 CFR 240.17a–5(d).

[671] *See* 17 CFR 240.0–10(c).

[672] This includes commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing. *See* SBA's Table of Small Business Size Standards, Subsector 522.

[673] This includes firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearing house activities, and other activities related to credit intermediation. *See* SBA's Table of Small Business Size Standards, Subsector 522.

[674] This includes firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. *See* SBA's Table of Small Business Size Standards, Subsector 523.

[675] This includes direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities. *See* SBA's Table of Small Business Size Standards, Subsector 524.

[676] This includes pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles. *See* SBA's Table of Small Business Size Standards, Subsector 525.

§ 240.15a–12 Conditional exemption from the regulation of brokers registered as security-based swap execution facilities.

(a) A security-based swap execution facility (as that term is defined in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77))) may register as a broker under section 15(a)(1) and (b) of the Act (15 U.S.C. 78o(a)(1) and (b)) by registering as a security-based swap execution facility, if such security-based swap execution facility does not engage in any activity other than facilitating the trading of security-based swaps on or through the security-based swap execution facility in a manner consistent with Regulation SB SEF (17 CFR 242.800 through 242.823).

(b) Except for the provisions of the Act specified in paragraph (c) of this section, a broker registered under paragraph (a) of this section that does not engage in any activity other than facilitating the trading of security-based swaps on or through the security-based swap execution facility in a manner consistent with the Regulation SB SEF (17 CFR 242.800 through 242.823) shall be exempt from the requirements of the Act and the rules and regulations thereunder that, by their terms, require, prohibit, restrict, limit, condition, or affect activities of a broker unless those requirements of the Act or any rule, regulation, or order thereunder specifies that it applies to a security-based swap execution facility.

(c) The following provisions of the Act shall apply to a broker that is a security-based swap execution facility:

(1) Section 15(b)(4) of the Act (15 U.S.C. 78o(b)(4));

(2) Section 15(b)(6) of the Act (15 U.S.C. 78o(b)(6)); and

(3) Section 17(b) of the Act (15 U.S.C. 78q(b)).

(d) A broker registered under paragraph (a) of this section that does not engage in any activity other than facilitating the trading of security-based swaps on or through the security-based swap execution facility in a manner consistent with Regulation SB SEF (17 CFR 242.800 through 242.823) shall be exempt from the Securities Investor Protection Act.

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SB SEF AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

4. The authority citation for part 242 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

Sections 242.800 through 242.823 are also issued under sec. 943, Pub. L. 111–203, Section 763.

5. The heading for part 242 is revised to read as set forth above.

6. Add §§ 242.800 through 242.823 to read as follows:

* * * * *

Sec.

* * * * *

§ 242.800 Definitions.

Terms used in this Regulation SB SEF (17 CFR 242.800 through 242.823) that appear in section 3 of the Act (15 U.S.C. 78c) have the same meaning as in section 3 of the Act (15 U.S.C. 78c) and the rules or regulations thereunder. In addition, the following definitions shall apply:

The term *affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, the person.

The terms *beneficial ownership, beneficially owns,* or any derivative thereof have the same meaning, with respect to any security or other ownership interest, as set forth in § 240.13d–3 of this chapter, as if (and whether or not) such security or other ownership interest were a voting equity security registered under section 12 of the Act (15 U.S.C. 78*l*); provided that to the extent any person is a member of a group within the meaning of section 13(d)(3) under the Act (15 U.S.C. 78m(d)(3)) and § 240.13d–5(b) of this chapter, such person shall not be deemed to beneficially own such security or other ownership interest for purposes of this section, unless such person has the power to direct the vote of such security or other ownership interest.

The term *block trade* has the same meaning as § 242.900, provided however that until the Commission sets the criteria and formula for determining what constitutes a block trade under § 242.907(b), a security-based swap execution facility may set its own criteria and formula for determining what constitutes a block trade as long as such criteria and formula comply with the Core Principles relating to security-based swap execution facilities in section 3D of the Act (15 U.S.C. 78c–4) and the rules and regulations thereunder.

The term *Board* means the Board of Directors or Board of Governors of the security-based swap execution facility or any equivalent body.

The term *competent, objective personnel* means a recognized information technology firm or a qualified internal department knowledgeable of information technology systems.

The term *control, controlled by, or any derivative thereof,* for purposes of §§ 242.800 through 823, 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. For purposes of §§ 242.800 through 823, a person is presumed to control another person if the person:

(1) Is a director, general partner, or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

The term *director* means any member of the Board.

The term *EDGAR Filer Manual* has the same meaning as set forth in § 232.11 of this chapter.

The term *emergency* has the same meaning as set forth in section 12(k)(7) of the Act (15 U.S.C. 78*l*(k)(7)).

The term *immediate family member* means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

The term *independent director* means:

(1) A director who has no material relationship with:

(i) The security-based swap execution facility or any affiliate of the security-based swap execution facility; or

(ii) A participant or any affiliate of a participant.

(2) A director is not an independent director if any of the following circumstances exists:

(i) The director, or an immediate family member, is employed by or otherwise has a material relationship with the security-based swap execution facility or any affiliate thereof, or within the past three years, was employed by or otherwise had a material relationship with the security-based swap execution facility or any affiliate thereof;

(ii) (A) The director is a participant or, within the past three years, was employed by or affiliated with a participant or any affiliate thereof; or

(B) The director has an immediate family member that is, or within the past three years was, an executive officer of a participant or any affiliate thereof;

(iii) The director, or an immediate family member, has received during any twelve month period, within the past three years, payments that reasonably could affect the independent judgment or decision-making of the director from the security-based swap execution facility or any affiliate thereof or from a participant or any affiliate thereof, other than the following:

(A) Compensation for Board or Board committee services;

(B) Compensation to an immediate family member who is not an executive officer of the security-based swap execution facility or any affiliate thereof or of a participant or any affiliate thereof; or

(C) Pension and other forms of deferred compensation for prior services, not contingent on continued service;

(iv) The director, or an immediate family member, is a partner in, or controlling shareholder or executive officer of, any organization to or from which the security-based swap execution facility or any affiliate thereof made or received payments for property or services in the current or any of the past three full fiscal years that exceed two percent of the recipient's consolidated gross revenues for that year, other than the following:

(A) Payments arising solely from investments in the securities of the security-based swap execution facility or any affiliate thereof; or

(B) Payments under non-discretionary charitable contribution matching programs;

(v) The director, or an immediate family member, is, or within the past three years was, employed as an executive officer of another entity where any executive officers of the security-based swap execution facility serve on that entity's compensation committee;

(vi) The director, or an immediate family member, is a current partner of the outside auditor of the security-based swap execution facility or any affiliate thereof, or was a partner or employee of the outside auditor of the security-based swap execution facility or any affiliate thereof who worked on the audit of the security-based swap execution facility or any affiliate thereof, at any time within the past three years; or

(vii) In the case of a director that is a member of the audit committee of the security-based swap execution facility, such director (other than in his or her capacity as a member of the audit committee, the Board, or any other Board committee), accepts, directly or indirectly, any consulting, advisory, or other compensatory fee from the security-based swap execution facility or any affiliate thereof or a participant or any affiliate thereof, other than fixed amounts of pension and other forms of deferred compensation for prior service, provided such compensation is not contingent in any way on continued service.

The term *material change* means a change that a Chief Compliance Officer would reasonably need to know in order to oversee compliance of the security-based swap execution facility.

The term *material compliance matter* means any compliance matter that the Board would reasonably need to know to oversee the compliance of the security-based swap execution facility and includes, without limitation:

(1) A violation of the Federal securities laws by the security-based swap execution facility, its officers, directors, employees, or agents;

(2) A violation of the policies and procedures of the security-based swap execution facility by the security-based swap execution facility, its officers, directors, employees, or agents; or

(3) A weakness in the design or implementation of the security-based swap execution facility's policies and procedures.

The term *material systems change* means a change to automated systems that:

(1) Significantly affects existing capacity or security;

(2) In itself, raises significant capacity or security issues, even if it does not affect other existing systems;

(3) Relies upon substantially new or different technology;

(4) Is designed to provide a new service or function; or

(5) Otherwise significantly affects the operations of the security-based swap execution facility.

The term *material systems outage* means an unauthorized intrusion into any system or an event at a security-based swap execution facility that causes a problem in systems or procedures that results in:

(1) A failure to maintain accurate, time-sequenced records of all orders, quotations, and transactions that are received by, or originated on, the security-based swap execution facility;

(2) A disruption of normal operations, including switchover to back-up equipment with no possibility of near-term recovery of primary hardware;

(3) A loss of use of any system;

(4) A loss of transactions;

(5) Excessive back-ups or delays in executing trades;

(6) A loss of ability to disseminate vital information;

(7) A communication of an outage situation to other external entities;

(8) A report or referral of an event to the Board or senior management of the security-based swap execution facility;

(9) A serious threat to systems operations even though systems operations were not disrupted;

(10) A queuing of data between system components or queuing of messages to or from participants of such duration that a participant's normal activity with the security-based swap execution facility is affected; or

(11) A failure to maintain the integrity of systems that results in the entry of erroneous or inaccurate inquiries, responses, orders, quotations, other trading interest, transactions, or other information in the security-based swap execution facility or the securities markets as a whole.

The term *non-resident person* means:

(1) In the case of an individual, one who resides in or has his principal place of business in any place not in the United States;

(2) In the case of a corporation, one incorporated in or having its principal place of business in any place not in the United States; and

(3) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not in the United States.

The term *objective review* means an internal or external review, performed by competent, objective personnel following established audit procedures and standards, and containing a risk assessment conducted pursuant to a review schedule.

The term *participant* when used with respect to a security-based swap execution facility means a person that is permitted to directly effect transactions on the security-based swap execution facility.

The term *person associated with a participant* means any partner, officer, director, or branch manager of such participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such participant, or any employee of such participant.

The term *related person* when used with respect to a participant means:

(1) Any affiliate of a participant;

(2) Any person associated with a participant;

(3) Any immediate family member of a participant, or any immediate family member of the spouse of such participant, who, in each case, has the same home as the person or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries; or

(4) Any immediate family member of a person associated with a participant, or any immediate family member of the spouse of such person, who, in each case, has the same home as the person associated with the participant or who is a director or officer of the security-based swap execution facility or any of its parents or subsidiaries.

The term *review schedule* means a schedule in which each element contained in § 242.822(a)(1) would be assessed at specific, regular intervals.

The term *tagged* means having an identifier that highlights specific information submitted to the Commission that is in the format required by the EDGAR Filer Manual, as described in Section 301 of Regulation S–T (17 CFR 232.301).

§ 242.801 Application for registration as a security-based swap execution facility.

(a) An application for registration as a security-based swap execution facility shall be filed electronically in a tagged data format with the Commission on Form SB SEF (referenced in § 249.1700 of this chapter), in accordance with the instructions contained therein. The application must include information sufficient to demonstrate compliance with the Act and rules and regulations thereunder. Form SB SEF consists of instructions, an Execution Page, and a list of Exhibits that the Commission requires in order to be able to determine whether an applicant is able to comply with the Act and rules and regulations thereunder. An application on Form SB SEF will not be considered to be complete unless the applicant has submitted, at a minimum, the Execution Page and Exhibits as required in Form SB SEF, and any other material that the Commission may require, upon request, in order to be able to determine whether an applicant is able to comply with the Act and rules and regulations thereunder. If the application is not complete, the Commission shall notify the applicant that the application will not be deemed to have been submitted for purposes of the Commission's review.

(b)(1) In connection with an application for registration furnished to the Commission under paragraph (a) of this section on or before July 31, 2014, within 360 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall:

(i) By order grant registration; or

(ii) Institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 450 days after the date on which the application for registration is furnished to the Commission under paragraph (a) of this section. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(2) In connection with an application for registration furnished to the Commission under paragraph (a) of this section after July 31, 2014, within 180 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall:

(i) By order grant registration; or

(ii) Institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 270 days after the date on which the application for registration is furnished to the Commission under paragraph (a) of this section. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(3) The Commission shall grant the registration of a security-based swap execution facility if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny the registration of a security-based swap execution facility if it does not make such finding.

(c) For any application for registration as a security-based swap execution facility filed pursuant to paragraph (a) of this section on Form SB SEF (referenced in § 249.1700 of this chapter) on or before July 31, 2014, for which the applicant indicates that it would like to be considered for temporary registration pursuant to this paragraph (c), the Commission may grant temporary registration of the security-based swap execution facility that shall expire on the earlier of:

(1) The date that the Commission grants or denies registration of the security-based swap execution facility; or

(2) The date that the Commission rescinds the temporary registration of the security-based swap execution facility.

(d) A security-based swap execution facility shall designate and authorize on Form SB SEF (referenced in § 249.1700 of this chapter) an agent in the United States, other than a Commission member, official, or employee, who shall accept any notice or service of process, pleadings, or other documents in any suit, action or proceedings brought against the security-based swap execution facility to enforce the Federal securities laws or the rules or regulations thereunder.

(e) Any person applying for registration pursuant to paragraph (a) of this section that is controlled by any other person shall certify on its Form SB SEF (referenced in § 249.1700 of this chapter) and provide an opinion of counsel that any such person that controls such security-based swap execution facility will consent to and can, as a matter of law:

(1) Provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility; and

(2) Submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the security-based swap execution facility.

(f) Any non-resident person applying for registration pursuant to paragraph (a) of this section shall certify on its Form SB SEF (referenced in § 249.1700 of this chapter) and provide an opinion of counsel that the security-based swap execution facility can, as a matter of law:

(1) Provide the Commission with prompt access to the books and records of such security-based swap execution facility; and

(2) Submit to onsite inspection and examination by representatives of the Commission.

(g) An application for registration or any amendment thereto that is filed pursuant to Regulation SB SEF (referenced in § 249.1700 of this chapter) shall be considered a "report" filed with the Commission for purposes of sections 18(a) and 32(a) of the Act (15 U.S.C. 78r(a) and 78ff(a)) and the rules and regulations thereunder.

§ 242.802 Amendments to application.

(a) After the discovery that any information filed on Form SB SEF (referenced in § 249.1700 of this chapter), any statement therein, or any Exhibit or amendment thereto, was inaccurate when filed, the security-based swap execution facility shall file with the Commission an amendment correcting such inaccuracy promptly, but in no event later than 5 business days after such discovery.

(b)(1) The security-based swap execution facility shall file electronically with the Commission an amendment to Form SB SEF (referenced in § 249.1700 of this chapter), on Form SB SEF, within 5 business days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(i) Information filed on the Execution Page of Form SB SEF (referenced in § 249.1700 of this chapter), or amendment thereto; or

(ii) Information filed as part of Exhibits C, E, G or N, or any amendments thereto.

(2) An amendment required under this paragraph (b) shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate.

(c) Any security-based swap execution facility that is controlled by any other person shall file electronically with the Commission an amendment to Exhibit P to Form SB SEF (referenced in § 249.1700 of this chapter) on Form SB SEF, within 5 business days after any changes in the legal or regulatory framework of any person that controls the security-based swap execution facility that would impact the ability of or the manner in which any such person consents to or provides the Commission prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility, or impacts the Commission's ability to inspect and examine any such person with respect to the activities of the security-based swap execution facility. The amendment shall include a revised opinion of counsel pursuant to Exhibit P describing how, as a matter of law, any person that controls the security-based swap execution facility will continue to meet its obligations to consent to and provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility, and to consent to and be subject to onsite inspection and examination by representatives of the Commission with respect to the activities of the security-based swap execution facility under such new legal or regulatory framework.

(d) A non-resident security-based swap execution facility shall file electronically with the Commission an amendment to Exhibit P to Form SB SEF, on Form SB SEF (referenced in § 249.1700 of this chapter), within 5 business days after any changes in legal or regulatory framework that would impact the security-based swap execution facility's ability to or the manner in which it provides the Commission prompt access to its books and records or impacts the Commission's ability to inspect and examine the security-based swap execution facility. The amendment shall include a revised opinion of counsel pursuant to Exhibit P describing how, as a matter of law, the entity will continue to meet its obligations to provide the Commission with prompt access to its books and records and to be subject to onsite inspection and examination by representatives of the Commission under such new legal or regulatory framework.

(e) Whenever the number of changes to be reported in an amendment, or the number of amendments filed, are so great that the purpose of clarity will be promoted by the filing of a complete new statement and exhibits, a security-based swap execution facility may, at its election, or shall, upon request of any representative of the Commission, file as an amendment a complete new statement together with all exhibits which are prescribed to be filed in connection with Form SB SEF (referenced in § 249.1700 of this chapter).

(f) Within 60 days of the end of its fiscal year, a security-based swap execution facility shall file an amendment to its Form SB SEF (referenced in § 249.1700 of this chapter), which shall update the Form SB SEF in its entirety. Each exhibit to the amended Form SB SEF shall be up to date as of the end of the latest fiscal year of the security-based swap execution facility.

§ 242.803 Supplemental material to be filed by security-based swap execution facilities.

(a) A registered security-based swap execution facility, or a security-based swap execution facility exempted from such registration pursuant to section 3D(e) of the Act (15 U.S.C. 78c–4(e)), shall file electronically with the Commission any material relating to the trading of security-based swaps (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to participants. Such material shall be filed with the Commission upon issuing or making such material available to the participants.

(b) If the information required to be filed under paragraph (a) of this section is available continuously on an Internet Web site controlled by a security-based swap execution facility, in lieu of filing such information with the Commission, such security-based swap execution facility may:

(1) Indicate the location of the Internet Web site where such information may be found; and

(2) Certify that the information available at such location is accurate as of its date.

§ 242.804 Withdrawal from or revocation of registration for security-based swap execution facilities.

(a) A registered security-based swap execution facility may withdraw from registration by filing a written notice of withdrawal with the Commission. The security-based swap execution facility shall designate on its notice of withdrawal a person associated with the security-based swap execution facility to serve as the custodian of the security-based swap execution facility's books and records. Prior to filing a notice of withdrawal, a security-based swap execution facility shall file an amended Form SB SEF (referenced in § 249.1700 of this chapter) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a security-based

swap execution facility shall become effective for all matters (except as provided in this paragraph (b)) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such security-based swap execution facility consents or the Commission, by order, may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine.

(c) A notice of withdrawal that is filed pursuant to this rule shall be considered a "report" filed with the Commission for purposes of sections 18(a) and 32(a) of the Act (15 U.S.C. 78r(a) and 78ff(a)), and the rules and regulations thereunder.

(d) If the Commission finds, on the record after notice and opportunity for hearing, that any registered security-based swap execution facility has obtained its registration by making any false or misleading statements with respect to any material fact or has violated or failed to comply with any provision of the Federal securities laws and the rules and regulations thereunder, the Commission, by order, may revoke the registration. Pending final determination of whether any registration shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

(e) If the Commission finds that a registered security-based swap execution facility is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, may cancel the registration.

§ 242.805 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A registered security-based swap execution facility may request that the Commission approve a new rule or rule amendment prior to implementation of the new rule or rule amendment or, if the request was initially submitted under § 242.806 or 242.807, subsequent to implementation of the new rule or rule amendment. A request for approval shall:

(1) Be filed electronically with the Commission in a format specified by the Commission;

(2) Set forth the text of the new rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(3) Describe the proposed effective date of the new rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the registered security-based swap execution facility or by its Board, or by any committee thereof, and cite the rules of the registered security-based swap execution facility that authorize the adoption of the proposed rule change;

(4) Explain the operation, purpose, and effect of the new rule or rule amendment, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered security-based swap execution facility's framework of regulation;

(5) Certify that the registered security-based swap execution facility has published on its Web site a notice of pending new rule or rule amendment with the Commission and a copy of the submission, concurrent with the filing of the submission with the Commission;

(6) Include the documentation relied on to establish the basis for compliance with the applicable provisions of the Act and Commission rules and regulations thereunder, including section 3D(d) of the Act (15 U.S.C. 78c–4(d)) and the rules and regulations thereunder;

(7) Provide additional information that may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the registered security-based swap execution facility, the pertinent text of any such rule must be set forth and the anticipated effect described;

(8) Describe briefly any substantive opposing views expressed to the registered security-based swap execution facility by the Board or committee members, participants, or market participants with respect to the new rule or rule amendment that were not incorporated into the new rule or rule amendment;

(9) Identify any Commission rule or regulation that the Commission may need to amend, or sections of the Act or the rules or regulations thereunder that the Commission may need to interpret, in order to approve the new rule or rule amendment. To the extent that such an amendment or interpretation is necessary to accommodate a new rule or rule amendment, the submission should include a reasoned analysis supporting the proposed amendment or interpretation;

(10) In the case of proposed amendments to the terms and conditions of a security-based swap, include a written statement verifying that the registered security-based swap execution facility has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the security-based swap; and

(11) A request for confidential treatment, if appropriate, as permitted pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the new rule or rule amendment is inconsistent with the Act or Commission rules or regulations.

(c) *Forty-five day review.* (1) All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the registered security-based swap execution facility is notified otherwise within the applicable period, if:

(i) The submission complies with the requirements of paragraph (a) of this section; and

(ii) The registered security-based swap execution facility does not amend the new rule or rule amendment or supplement the submission, except as requested by the Commission, during the pendency of the review period. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(d) *Extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for any approval request for:

(1) An additional 45 days, if the new rule or rule amendment raises novel or complex issues that require additional time for review, is of major economic significance, the submission is incomplete, or the requestor does not respond completely to the Commission's questions in a timely manner, in which case, the Commission shall notify the submitting registered security-based swap execution facility within the initial 45-day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in paragraph (d)(1) of this section, to which the registered security-based swap execution facility agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the registered security-based swap execution facility that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or Commission rules or regulations, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Commission rules or regulations.

(f) *Effect of non-approval.* (1) Notification to a registered security-based swap execution facility under paragraph (e) of this section shall not prevent the registered security-based swap execution facility from subsequently submitting a revised version of the new rule or rule amendment for the Commission's review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission. The revised submission will be reviewed without prejudice.

(2) Notification to a registered security-based swap execution facility under paragraph (e) of this section of the Commission's determination not to approve the new rule or rule amendment of the registered security-based swap execution facility shall be presumptive evidence that the registered security-based swap execution facility may not truthfully certify the same, or substantially the same, proposed rule or rule amendment under § 242.806.

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, a new rule or rule amendment, including proposed changes to the terms and conditions of a security-based swap, that is consistent with the Act and Commission rules and regulations and with standards approved or established by the Commission may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification; provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 242.806 Self-certification of rules.

(a) *Required certification.* A registered security-based swap execution facility shall comply with the following conditions prior to implementing any rule that has not obtained Commission approval under § 242.805:

(1) The registered security-based swap execution facility has filed its submission electronically in a format specified by the Commission.

(2) The registered security-based swap execution facility has provided to the Commission a certification that it published on its Web site a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission. Information that the registered security-based swap execution facility seeks to keep confidential may be redacted from the documents published on its Web site but must be republished consistent with any determination made pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83.

(3) The Commission has received the submission not later than the opening of business on the business day that is 10 business days prior to the registered security-based swap execution facility's proposed implementation of the rule or rule amendment; provided, however, that if a security-based swap execution facility implements any rule or rule amendment in the exercise of its emergency authority pursuant to § 242.816, it shall file such rule or rule amendment with the Commission pursuant to this paragraph (a) prior to the implementation of such rule or rule amendment, or, if not practicable, within 24 hours after implementation of such emergency rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to paragraph (c) of this section.

(5) The rule submission includes:

(i) The text of the rule (in the case of a rule amendment, deletions, and additions must be indicated);

(ii) The date of intended implementation;

(iii) A certification by the registered security-based swap execution facility that the rule complies with the Act and Commission rules and regulations thereunder;

(iv) The documentation relied on to establish the basis for compliance with the applicable provisions of the Act and Commission rules and regulations thereunder, including section 3D(d) of the Act (15 U.S.C. 78c–4(d)) and the rules and regulations thereunder;

(v) A brief explanation of any substantive opposing views expressed to the registered security-based swap execution facility by the Board or committee members, participants, or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(vi) A request for confidential treatment, if appropriate, as permitted pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83; and

(vii) For amendments to the terms and conditions of a security-based swap, a written statement verifying that the registered security-based swap execution facility has undertaken a due diligence review of the legal conditions, including conditions relating to contractual and intellectual property rights, that may materially affect the trading of the product.

(6) The registered security-based swap execution facility has provided, upon request of any representative of the Commission, additional evidence, information, or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the registered security-based swap execution facility's compliance with any of the requirements of the Act or Commission rules or regulations thereunder.

(b) *Review by the Commission.* The Commission shall have 10 business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the registered security-based swap execution facility during the 10-business day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay.* (1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the registered security-based swap execution facility that the Commission is staying the certification of the new rule or rule amendment on the grounds that the new rule or rule amendment presents novel or complex issues that require additional time to analyze, the new rule or rule amendment is accompanied by an inadequate explanation, or the new rule or rule amendment is potentially inconsistent with the Act or Commission rules or regulations

thereunder. The Commission will have 90 days from the date of the notification to conduct a review.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day review period while the stay is in effect as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission's Web site. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to paragraph (c) of this section shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section unless the Commission withdraws the stay prior to that time or the Commission notifies the registered security-based swap execution facility during the 90-day review period that it objects to the certification on the grounds that the new rule or rule amendment is inconsistent with the Act or Commission rules or regulations thereunder.

(d) Notwithstanding paragraph (a) of this section, a registered security-based swap execution facility may place the following new rules or rule amendments into effect on the following business day without certification to the Commission if the following conditions are met:

(1) The rule is limited to corrections of typographical errors, renumbering, periodic routine updates to identifying information about approved entities, and other such non-substantive revisions of the terms and conditions of a security-based swap that have no effect on the economic characteristics of the security-based swap; and

(2) The registered security-based swap execution facility provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Amendments" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format specified by the Commission.

(e) Notwithstanding paragraph (a) of this section, a registered security-based swap execution facility may place the following new rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(1) The rule governs:

(i) *Administrative procedures.* The organization and administrative procedures of a security-based swap execution facility's governing bodies, such as the Board, officers, and committees, but not any of the following: Voting requirements, Board or committee composition requirements or procedures, decision making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest; or

(ii) *Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not any of the following: Guaranty, reserves, or similar funds; declaration of holidays; and changes to facilities housing the market; and

(2) The registered security-based swap execution facility maintains documentation regarding all changes to rules and posts all such rule changes on its Web site.

§ 242.807 Trading security-based swaps pursuant to certification.

(a) A registered security-based swap execution facility shall comply with the submission requirements of this section prior to trading a security-based swap that has not been approved under § 242.808. A submission shall comply with the following conditions:

(1) The registered security-based swap execution facility has filed its submission electronically in a format specified by the Commission;

(2) The Commission has received the submission by the opening of business on the business day preceding the day on which the security-based swap would begin trading;

(3) The Commission has not stayed the submission pursuant to paragraph (c) of this section; and

(4) The submission includes:

(i) A copy of the terms and conditions of the security-based swap;

(ii) The intended date on which the security-based swap may begin trading;

(iii) A certification by the registered security-based swap execution facility that the security-based swap to be traded complies with the Act and Commission rules and regulations thereunder;

(iv) The documentation relied on to establish the basis for compliance with the Act and the rules and regulations thereunder, including section 3D(d) of the Act (15 U.S.C. 78c–4(d)) and the rules and regulations thereunder;

(v) A written statement verifying that the registered security-based swap execution facility has undertaken a due diligence review of the legal conditions, including legal conditions that relate to contractual and intellectual property rights, that may materially affect the trading of the security-based swap;

(vi) A certification that the registered security-based swap execution facility published on its Web site a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of the submission with the Commission. Information that the registered security-based swap execution facility seeks to keep confidential may be redacted from the documents published on its Web site, but must be republished consistent with any determination made pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83; and

(vii) A request for confidential treatment, if appropriate, as permitted pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83.

(b) A registered security-based swap execution facility, upon request of any representative of the Commission, shall provide any additional evidence, information, or data that demonstrates that the security-based swap meets, initially or on a continuing basis, all of the requirements of the Act and Commission rules and regulations thereunder.

(c) *Stay.* (1) The Commission may stay the certification of a security-based swap pursuant to paragraph (a) of this section by issuing a notification informing the registered security-based swap execution facility that the Commission is staying the certification on the grounds that the security-based swap proposed to begin trading presents novel or complex issues that require additional time to analyze, the certification is accompanied by an inadequate explanation or the proposed security-based swap is potentially inconsistent with the Act or Commission rules or regulations thereunder. The Commission will have 90 days from the date of the notification to conduct the review.

(2) *Public comment.* The Commission shall provide a 30-day comment period, within the 90-day review period while the stay is in effect as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission's Web site. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay.* A proposed security-based swap subject to a stay pursuant to paragraph (c) of this section shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section unless the Commission withdraws the stay prior to that time or the Commission notifies the registered security-based swap execution facility during the 90-day review period that it objects to the proposed certification on the grounds that it is inconsistent with the Act or Commission rules or regulations thereunder.

§ 242.808 Trading security-based swaps pursuant to Commission review and approval.

(a) A registered security-based swap execution facility may request that the Commission approve a security-based swap prior to trading such security-based swap or, if a security-based swap was initially submitted under § 242.807, subsequent to the commencement of trading such security-based swap. A submission requesting approval shall be filed electronically with the Commission in a format specified by the Commission and include:

(1) A copy of the terms and conditions of the security-based swap;

(2) The documentation relied on to establish the basis for compliance with the Act and rules and regulations thereunder, including section 3D(d) of the Act (15 U.S.C. 78c–4(d)) and the rules and regulations thereunder;

(3) A written statement verifying that the registered security-based swap execution facility has undertaken a due diligence review of the legal conditions, including legal conditions that relate to contractual and intellectual property rights, that may materially affect the trading of the security-based swap;

(4) A request for confidential treatment, if appropriate, as permitted pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules and regulations thereunder, 17 CFR 200.83;

(5) A certification that the registered security-based swap execution facility has published on its Web site a notice of pending request for approval with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission. Information that the registered security-based swap execution facility seeks to keep confidential may be redacted from the documents published on its Web site, but must be republished consistent with any determination made pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission rules or regulations thereunder, 17 CFR 200.83; and

(b) A registered security-based swap execution facility, upon request of any representative of the Commission, shall provide additional evidence, information, or data that demonstrates that the security-based swap meets, initially or on a continuing basis, all of the requirements of the Act and Commission rules or regulations thereunder.

(c) *Standard for review and approval.* The Commission shall approve a security-based swap unless the terms and conditions of such security-based swap are inconsistent with the Act or Commission rules or regulations thereunder.

(d) *Forty-five day review.* All security-based swaps submitted for Commission approval under this section shall be deemed approved by the Commission 45 days after receipt by the Commission or at the conclusion of an extended period as provided under paragraph (e) of this section, unless the registered security-based swap execution facility is notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The registered security-based swap execution facility making the submission does not amend the terms and conditions of the security-based swap or supplement its request for approval during that period, except as requested by the Commission to correct typographical errors, renumber, or make other non-substantive revisions, during that period. Any voluntary, substantive amendment by the registered security-based swap execution facility shall be treated as a new submission under this section.

(e) *Extension of time.* The Commission may extend the 45-day review period in paragraph (d) of this section for:

(1) An additional 45 days, if the proposed security-based swap raises novel or complex issues that require additional time for review, in which case the Commission shall notify the registered security-based swap execution facility within the initial 45-day review period and shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Any extended review period to which the registered security-based swap execution facility agrees in writing.

(f) *Notice of non-approval.* The Commission at any time during its review under this section may notify the registered security-based swap execution facility that it will not, or is unable to, approve the security-based swap. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or Commission rules or regulations thereunder, including the form or content requirements of paragraph (a) of this section, with which the security-based swap is inconsistent, appears to be inconsistent, or is potentially inconsistent.

(g) *Effect of non-approval.* (1) Notification to a registered security-based swap execution facility under paragraph (f) of this section of the Commission's determination not to approve a security-based swap shall not prejudice the registered security-based swap execution facility from subsequently submitting a revised version of the security-based swap for Commission approval or from submitting the security-based swap as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered security-based swap execution facility under paragraph (f) of this section of the Commission's inability to approve the security-based swap shall be presumptive evidence that the registered security-based swap execution facility may not truthfully certify under § 242.807 that the same, or substantially the same, security-based swap complies with the Act or Commission rules and regulations thereunder.

§ 242.809 Access to security-based swap execution facilities.

(a) A security-based swap execution facility shall permit a person to become a participant in the security-based swap execution facility only if such person is registered with the Commission as a security-based swap dealer, major security-based swap participant, or broker (as defined in section 3(a)(4) of the Act, 15 U.S.C. 78c(a)(4)), or if such person is an eligible contract participant (as defined in section 3(a)(65) of the Act, 15 U.S.C. 78c(a)(65)).

(b) A security-based swap execution facility shall permit all eligible persons that meet the requirements for becoming a participant in the security-based swap execution facility under paragraph (a) of this section and the security-based swap execution facility's rules to become participants of the security-based swap execution facility, consistent with the requirements for providing impartial access in section 3D(d)(6) of the Act (15 U.S.C. 78c–4(d)(6)) and § 242.811(b); provided, however, that a security-based

swap execution facility may choose to not permit any eligible contract participants that are not registered with the Commission as a security-based swap dealer, major security-based swap participant, or broker (as defined in section 3(a)(4) of the Act, 15 U.S.C. 78c(a)(4)) to become participants in the security-based swap execution facility.

(c) A security-based swap execution facility shall establish rules setting forth requirements for an eligible person to become a participant in the security-based swap execution facility consistent with the security-based swap execution facility's obligations under the Act and the rules and regulations thereunder. Such rules must require a participant, at a minimum, to:

(1) Be a member of, or have an arrangement with a member of, a registered clearing agency to clear trades in the security-based swaps that are subject to mandatory clearing pursuant to section 3C(a)(1) of the Act (15 U.S.C. 78c–3(a)(1)) and entered into by the participant on the security-based swap execution facility;

(2)(i) Meet the minimum financial responsibility and recordkeeping and reporting requirements imposed by the Commission by virtue of its registration as a security-based swap dealer, major security-based swap participant, or broker; or

(ii) In the case of an eligible contract participant that is not registered with the Commission as a security-based swap dealer, major security-based swap participant, or broker, meet the recordkeeping and reporting requirements that the security-based swap execution facility shall establish pursuant to § 242.813;

(3) Agree to comply with the rules, policies, and procedures of the security-based swap execution facility; and

(4) Consent to the disciplinary procedures of the security-based execution facility for violations of the security-based swap execution facility's rules.

(d)(1) A security-based swap execution facility that permits an eligible contract participant that is not registered as a security-based swap dealer, major security-based swap participant or broker to become a participant in the security-based swap execution facility pursuant to this section shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

(2) The risk management controls and supervisory procedures for granting access to eligible contract participants that are not registered as a security-based swap dealer, major security-based swap participant, or broker as participants of the security-based swap execution facility shall be reasonably designed to ensure compliance with all regulatory requirements.

§ 242.810 Compliance with core principles.

(a) To be registered, and maintain registration, as a security-based swap execution facility, a security-based swap execution facility shall comply with:

(1) The Core Principles described in section 3D of the Act (15 U.S.C. 78c–4) and the rules and regulations thereunder; and

(2) The requirements of this rule and any other requirement that the Commission may impose by rule or regulation.

(b) A security-based swap execution facility shall establish:

(1) Rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and any other users of its system;

(2) Rules and systems that are not designed to permit unfair discrimination among its participants and any other persons using its system;

(3) Rules that promote just and equitable principles of trade; and

(4) Rules to provide, in general, a fair procedure for disciplining participants for violations of the rules of the security-based swap execution facility.

(c) A security-based swap execution facility shall not use for non-regulatory purposes any confidential information it collects or receives, from or on behalf of any person, in connection with the security-based swap execution facility's regulatory obligations.

§ 242.811 Compliance with rules.

(a) A security-based swap execution facility shall:

(1) Establish and enforce compliance with any rule established by such security-based swap execution facility, including:

(i) The terms and conditions of the security-based swaps traded or processed on or through the security-based swap execution facility; and

(ii) Any limitation on access to the security-based swap execution facility;

(2) Establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means:

(i) To provide market participants with impartial access to the market; and

(ii) To capture information that may be used in establishing whether rule violations have occurred; and

(3) Establish rules governing the operation of the security-based swap execution facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the security-based swap execution facility, including block trades.

(b) A security-based swap execution facility shall:

(1) Establish fair, objective, and not unreasonably discriminatory standards for granting impartial access to trading on the security-based swap execution facility, which standards shall include a requirement that each participant of the security-based swap execution facility submit to the oversight (including the disciplinary procedures of paragraph (g) of this section) of the security-based swap execution facility, with respect to the participant's trading on the facility, as a condition of becoming a participant in such security-based swap execution facility;

(2) Not unreasonably prohibit or limit any person in respect to access to the services offered by such security-based swap execution facility by applying the standards established under paragraph (b)(1) of this section in an unfair or unreasonably discriminatory manner;

(3) Make and keep records of:

(i) All grants of access, including, for all participants, the basis for granting such access; and

(ii) All denials or limitations of access for each applicant or participant (as applicable), and the reasons for denying or limiting access;

(4) Report the information required regarding grants, denials, and limitations of access on Form SB SEF (referenced in § 249.1700 of this chapter) and in the annual compliance report of the Chief Compliance Officer pursuant to § 242.823(c); and

(5) Establish a fair process for the review of any prohibition or limitation on access with respect to a participant or any refusal to grant access with respect to an applicant.

(c) A security-based swap execution facility shall establish and enforce compliance with rules concerning the terms and conditions of the security-based swaps traded on the security-based swap execution facility.

(1) A security-based swap execution facility shall establish a swap review committee to determine:

(i) The security-based swaps that shall trade on the security-based swap execution facility; and

(ii) The security-based swaps that shall no longer trade on the security-based swap execution facility.

(2) The composition of the swap review committee shall provide for the

fair representation of participants of the security-based swap execution facility and other market participants, such that each class of participant and other market participants shall be given the right to participate in such swap review committee and that no single class of participant or category of market participant shall predominate. The rules of the security-based swap execution facility shall stipulate the method by which such representation shall be chosen by the Board.

(3) The security-based swap execution facility shall establish criteria that the swap review committee shall consider in determining which security-based swaps shall trade on the security-based swap execution facility.

(4) The swap review committee shall periodically review, on at least a quarterly basis, each security-based swap trading on the security-based swap execution facility to determine whether the trading characteristics of each security-based swap justify a change to the trading platform for each such security-based swap. In addition to the factors set forth in paragraph (c)(3) of this section in making such a determination, the swap review committee shall consider whether:

(i) The liquidity in each security-based swap is at an appropriate level for the security-based swap's trading platform on which it trades; and

(ii) Such security-based swap would be more suited for trading on a different type of platform, including a platform that provides for increased price transparency for participants entering orders, requests for quotations, responses, quotations, or other trading interest. The first review shall not be earlier than 120 days after the initiation of trading for a given security-based swap.

(5) The swap review committee shall report decisions on each security-based swap promptly to the Chief Compliance Officer and annually to the regulatory oversight committee.

(d) A security-based swap execution facility shall establish and enforce rules governing the procedures for trading on the security-based swap execution facility, including, but not limited to, rules concerning:

(1) Doing business on the security-based swap execution facility;

(2) The types of orders, requests for quotations, responses, quotations, or other trading interest that will be available on the security-based swap execution facility;

(3) The manner in which trading interest, including orders, requests for quotations, responses, or quotations will be handled on the security-based swap execution facility. The rules of a security-based swap execution facility shall provide for fair treatment of all trading interest;

(4) The manner in which price transparency for participants entering orders, requests for quotations, responses, quotations, or other trading interest into the system will be promoted;

(5) The manner in which trading interest, including orders, requests for quotations, responses, quotations, and transaction data will be disseminated, whether to participants of the security-based swap execution facility or otherwise, and whether for a fee or otherwise;

(6) Prohibited trading practices;

(7) The prevention of the entry of orders, requests for quotations, responses, quotations, or other trading interest that may result in a trade that is clearly erroneous with respect to the terms of the trade; the fair and non-discriminatory manner of handling any trade that is clearly erroneous; and the resolution of any disputes concerning a clearly erroneous trade;

(8) Trading halts in any security-based swap, which rules shall include procedures for halting trading in a security-based swap when trading has been halted or suspended in the underlying security or securities pursuant to the rules or an order of a regulatory authority with authority over the underlying security or securities;

(9) The manner in which block trades will be handled, if different from the handling of non-block trades; and

(10) Any other rules concerning trading on the security-based swap execution facility.

(e) A security-based swap execution facility that operates a request-for-quote platform shall create and disseminate through the security-based swap execution facility a composite indicative quote for security-based swaps traded on or through such system, which shall be made available to all participants. The composite indicative quote shall include both composite indicative bids and composite indicative offers.

(f) A security-based swap execution facility shall establish and enforce rules concerning:

(1) The reporting of trades executed on the security-based swap execution facility to a clearing agency, if the transaction is subject to clearing; and

(2) The procedures for the processing of transactions in security-based swaps that occur on or though the security-based swap execution facility, including, but not limited to, procedures to resolve any disputes concerning the execution of a trade.

(g) A security-based swap execution facility shall establish rules and procedures concerning the disciplining of participants, including, but not limited to, rules:

(1) Authorizing its staff to recommend and take disciplinary action for violations of the rules of the security-based swap execution facility;

(2) Specifying the sanctions that may be imposed upon participants for violations of the rules of the security-based swap execution facility such that each sanction is commensurate with the corresponding violation; and

(3) Establishing fair and non-arbitrary procedures for any disciplinary process and appeal thereof.

(h) A security-based swap execution facility shall:

(1) Make and keep records of all disciplinary proceedings, sanctions imposed, and appeals thereof; and

(2) Disclose all disciplinary actions taken annually on an amendment to Form SB SEF and in the security-based swap execution facility's annual compliance report of the Chief Compliance Officer required pursuant to § 242.823(c). Such report shall include information summarizing any disciplinary action taken and the reasons for such action.

(i) A security-based swap execution facility shall establish rules and procedures to assure that information to be used to determine whether rule violations have occurred is captured and retained in a timely manner.

(j) A security-based swap execution facility shall:

(1) Have the capacity to capture information that may be used in establishing whether rule violations have occurred, including through the use of automated surveillance systems as set forth in § 242.813(b);

(2) Maintain appropriate resources to fulfill its obligations under this section; and

(3) Investigate possible rule violations.

§ 242.812 Security-based swaps not readily susceptible to manipulation.

(a) A security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

(b) Prior to permitting the trading of any security-based swap, a security-based swap execution facility's swap review committee shall have determined, after taking into account all of the terms and conditions of the security-based swap and the markets for the security-based swap and any underlying security or securities, that such security-based swap is not readily susceptible to manipulation.

(c) *Periodic Review.* The rules of a security-based swap execution facility shall require that, after commencement of trading of a security-based swap, the swap review committee shall periodically review the trading in the security-based swap. If the swap review committee cannot determine, after taking into account all of the terms and conditions of the security-based swap, the markets for the security-based swap and any underlying security or securities, and the trading in the security-based swap, that such security-based swap is not readily susceptible to manipulation, the security-based swap execution facility shall no longer permit the trading of such security-based swap.

§ 242.813 Monitoring of trading and trade processing.

(a) A security-based swap execution facility shall:

(1) Establish and enforce rules, terms and conditions defining, or specifications detailing:

(i) Trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) Procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(2) Monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(b) A security-based swap execution facility shall have the capacity and appropriate resources to electronically monitor trading in security-based swaps on its market by establishing an automated surveillance system, including through real-time monitoring of trading and use of automated alerts, that is designed to:

(1) Detect and deter any fraudulent or manipulative acts or practices, including insider trading or other unlawful conduct or any violation of the rules of the security-based swap execution facility that has occurred or is occurring;

(2) Detect and deter market distortions or disruptions of trading that may impact the entry and execution of trading interests or the processing of trading interests on or through the security-based swap execution facility;

(3) Conduct real-time monitoring of trading to provide for comprehensive and accurate trade reconstruction; and

(4) Collect and assess data to allow the security-based swap execution facility to respond promptly to market abuses or disruptions.

(c) A security-based swap execution facility shall establish and enforce rules that require any participant that enters any order, request for quotation, response, quotation, or other trading interest, or executes any transaction on the security-based swap execution facility, to:

(1) Maintain books and records of any such order, request for quotation, response, quotation or other trading interest, or transaction, and of any position in any security-based swap that is the result of any such order, request for quotation, response, quotation, other trading interest, or transaction; and

(2) Provide prompt access to such books and records to the security-based swap execution facility and to the Commission.

(d) A security-based swap execution facility shall establish and maintain procedures to investigate possible rule violations, to prepare reports concerning the findings and recommendations of any such investigations, and to take corrective action, as necessary.

§ 242.814 Ability to obtain information.

(a) A security-based swap execution facility shall establish and enforce rules requiring its participants to:

(1) Furnish to the security-based swap execution facility, upon request, and in the form and manner prescribed by the security-based swap execution facility, any information necessary to permit the security-based swap execution facility to perform its responsibilities under this section, including, without limitation, surveillance, investigations, examinations and discipline of participants; such information may include, without limitation, financial information, books, accounts, records, files, memoranda, correspondence, and any other information pertaining to orders, requests for quotations, responses, quotations, or other trading interest entered and transactions executed on or through the security-based swap execution facility;

(2) Cooperate with the security-based swap execution facility and allow access by the security-based swap execution facility, at such reasonable times as the security-based swap execution facility may request, to examine the books and records of the participant or to obtain or verify information related to orders, requests for quotation, responses, quotations, or other trading interest entered and transactions executed on or through its facilities; and

(3) Cooperate with any representative of the Commission and allow access by any representative of the Commission, at such reasonable times as any representative of the Commission may request, to examine the books and records of the participant or to obtain or verify other information related to orders, requests for quotation, responses, quotations, or other trading interest entered and transactions executed on or through its facilities.

(b) A security-based swap execution facility shall:

(1) Cooperate with any representative of the Commission and allow access by any representative of the Commission, at such reasonable times as any representative of the Commission may request, to:

(i) Examine the books and records required to be kept by the security-based swap execution facility pursuant to § 242.818; and

(ii) Obtain or verify other information related to orders, requests for quotations, responses, quotations, or other trading interest entered and transactions executed on or through its facilities;

(2) Upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents, in such form and manner acceptable to such representative, that the security-based swap execution facility possesses or has access to pursuant to paragraph (a) of this section;

(3) Have the capacity to carry out such international information-sharing agreements as the Commission may require; and

(4) Certify at the time of registration on Form SB SEF, and annually thereafter as part of the annual compliance report described in § 242.823, that the security-based swap execution facility has the capacity to fulfill its obligations under any international information-sharing agreements to which it is a party as of the date of such certification.

§ 242.815 Financial integrity of transactions.

(a) A security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of such security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1) of the Act (15 U.S.C. 78c–3(a)(1)).

(b) Notwithstanding the requirements of § 242.810(b)(2), the rules of a security-based swap execution facility relating to the trading on the security-based swap execution facility, of

security-based swaps that will not be cleared at a registered clearing agency may permit a participant to take into account counterparty credit risk.

§ 242.816 Emergency authority.

(a) A security-based swap execution facility shall establish rules and procedures to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as necessary or appropriate, which rules and procedures shall include the items set forth in paragraphs (b) and (c) of this section.

(b) A security-based swap execution facility shall establish rules and procedures that specify:

(1) The person or persons authorized by the security-based swap execution facility to declare an emergency;

(2) How the security-based swap execution facility will notify the Commission of its decision to exercise its emergency authority;

(3) How the security-based swap execution facility will notify the public of its decision to exercise its emergency authority;

(4) The processes for decision-making by the security-based swap execution facility personnel with respect to the exercise of emergency authority, including alternate lines of communication and guidelines to avoid conflicts of interest in the exercise of such authority; and

(5) The processes for determining that an emergency no longer exists and notifying the Commission and the public of such decision.

(c) A security-based swap execution facility shall have rules permitting the security-based swap execution facility to immediately take any or all of the following actions during an emergency:

(1) Impose or modify trading limits, price limits, position limits, or other market restrictions, including suspending or curtailing trading on its market in any security-based swap or class of security-based swaps;

(2) Extend or shorten trading hours;

(3) Coordinate trading halts with markets trading a security or securities underlying any security-based swap;

(4) Coordinate with a registered clearing agency to liquidate or transfer positions in any open security-based swap of one of its participants; and

(5) Any action, if so directed by the Commission.

(d)(1) A security-based swap execution facility shall promptly notify the Commission of the exercise of its emergency authority, followed by submission of written documentation within two weeks following cessation of the emergency explaining the basis for declaring an emergency, how conflicts of interest were minimized, and the extent to which the security-based swap execution facility considered the effect of its emergency action on the markets for the security-based swap and any security or securities underlying the security-based swap;

(2) If a security-based swap execution facility implements any rule or rule amendment in the exercise of its emergency authority, it shall file such rule or rule amendment with the Commission pursuant to § 242.806 prior to the implementation of such rule or rule amendment or, if not practicable, within 24 hours after implementation of such rule or rule amendment.

§ 242.817 Timely publication of trading information.

(a) A security-based swap execution facility shall:

(1) Have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all security-based swaps executed on or through the security-based swap execution facility; and

(2) Make public timely information on price, trading volume, and other trading data on security-based swaps to the extent and in the manner prescribed by the Commission.

(b) If any security-based swap execution facility makes available information regarding a security-based swap transaction to any party other than a counterparty to the transaction, then the security-based swap execution facility must make that information available to all participants on terms and conditions that are fair and reasonable and not unfairly discriminatory; provided however, that nothing in this paragraph shall prohibit a security-based swap execution facility from acting as the agent of a reporting party, as defined in § 242.900 ( ), for purposes of reporting required information directly to a registered security-based swap data repository.

(c) A security-based swap execution facility shall not make any information regarding a security-based swap transaction publicly available prior to the time a security-based swap data repository is permitted to publicly disseminate such information under § 242.902.

§ 242.818 Recordkeeping and reporting.

(a) A security-based swap execution facility shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records (including the audit trail records required pursuant to the provisions of paragraph (c) of this section) as shall be made or received by it in the conduct of its business.

(b) A security-based swap execution facility shall keep and preserve all such documents and other records for a period of not less than five years, the first two years in an easily accessible place.

(c) A security-based swap execution facility shall establish and maintain accurate, time-sequenced records of all orders, requests for quotations, responses, quotations, other trading interest, and transactions that are received by, originated on, or executed on the security-based swap execution facility. These records shall include the key terms of each order, request for quotation, response, quotation, other trading interest, or transaction and shall document the complete life of each order, request for quotation, response, quotation, other trading interest, or transaction on the security-based swap execution facility, including any modification, cancellation, execution, or any other action taken with respect to such order, request for quotation, response, quotation, other trading interest, or transaction.

(d) A security-based swap execution facility shall establish, maintain, and enforce written policies and procedures to verify the accuracy of the transaction data that it collects and reports.

(e) A security-based swap execution facility shall report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission may, from time to time, determine to be necessary to perform the duties of the Commission under the Act.

(f) A security-based swap execution facility shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents, in such form and manner acceptable to such representative, required to be kept and preserved by it pursuant to paragraphs (a) and (b) of this section.

§ 242.819 Antitrust considerations.

Unless necessary or appropriate to achieve compliance with the Act and the rules and regulations thereunder, a security-based swap execution facility shall not:

(a) Adopt any rule or take any action that results in any unreasonable restraint of trade; or

(b) Impose any material anticompetitive burden on trading or clearing.

§ 242.820 Conflicts of interest.

For additional rules relating to the mitigation of conflicts of interest of security-based swap execution facilities, *see* § 242.702.

(a) The rules of a security-based swap execution facility shall assure a fair representation of its participants in the selection of its directors and administration of its affairs, but no less than 20 percent of the total number of directors of the security-based swap execution facility must be selected by the participants; provided, however, that the security-based swap execution facility shall preclude any participant, or any group or class of participants, either alone or together with its related persons, that beneficially owns, directly or indirectly, an interest in the security-based swap execution facility from dominating or exercising disproportionate influence in the selection of such directors if the participant may thereby dominate or exercise disproportionate influence in the selection or appointment of the entire Board.

(b) At least one director on the Board shall be representative of investors who are not security-based swap dealers or major security-based swap participants, and such director must not be a person associated with a participant.

(c) The rules of a security-based swap execution facility must establish a fair process for participants to nominate an alternative candidate or candidates to the Board by petition and shall specify the percentage of the participants that is necessary to put forth such alternative candidate or candidates, which percentage shall not be unreasonable.

§ 242.821 Financial resources.

(a) A security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

(b) The financial resources of a security-based swap execution facility shall be considered to be adequate if, when using reasonable estimates and assumptions and not overestimating resources or underestimating expenses, liabilities, and financial exposure, the value of the financial resources:

(1) Enables the security-based swap execution facility to meet its financial obligations to participants, notwithstanding a default by the participant creating the largest financial exposure for the security-based swap execution facility in extreme but plausible market conditions; and

(2) Exceeds the total amount that would enable the security-based swap execution facility to cover its operating costs for a one-year period, as calculated on a rolling basis.

§ 242.822 System safeguards.

(a) *Requirements for security-based swap execution facilities.* A security-based swap execution facility, with respect to those systems that support or are integrally related to the performance of its activities, shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, resiliency, and security. These policies and procedures shall, at a minimum, require the security-based swap execution facility to:

(i) Establish reasonable current and future capacity estimates, including quantifying in appropriate units of measure the limits of the security-based swap execution facility's capacity to receive (or collect), process, store, or display (or disseminate for display or other use) the data elements included within each function, and identifying the factors (mechanical, electronic, or other) that account for the current limitations;

(ii) Conduct periodic, capacity stress tests of critical systems to determine such systems' ability to process transactions in an accurate, timely, and efficient manner;

(iii) Develop and implement reasonable procedures to review and keep current its system development and testing methodology;

(iv) Review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters;

(v) Establish adequate contingency and disaster recovery plans that shall include plans to resume trading of security-based swaps by the security-based swap execution facility no later than the next business day following a wide-scale disruption. In developing such plans, the security-based swap execution facility shall take into account:

(A) The extent of alternative trading venues for the security-based swaps traded by the security-based swap execution facility, including the number of security-based swaps traded on the security-based swap execution facility, the market share of the security-based swap execution facility, and the number of participants on the security-based swap execution facility; and

(B) The necessity of geographic diversity and diversity of infrastructure between the security-based swap execution facility's primary site and any back-up sites.

(2) On an annual basis, submit an objective review to the Commission within 30 calendar days of completion. Where the objective review is performed by an internal department, an objective, external firm shall assess the internal department's objectivity, competency, and work performance with respect to the review performed by the internal department. The external firm must issue a report of the objective review, which the security-based swap execution facility must submit to the Commission on an annual basis, within 30 calendar days of completion of the review;

(3) Promptly notify the Commission in writing of material systems outages and any remedial measures that have been implemented or are contemplated. Prompt notification includes the following:

(i) Immediately notify the Commission when a material systems outage is detected;

(ii) Immediately notify the Commission when remedial measures are selected to address the material systems outage;

(iii) Immediately notify the Commission when the material systems outage is addressed; and

(iv) Submit to the Commission within five business days of when the material systems outage occurred a more detailed written description and analysis of the outage and any remedial measures that have been implemented or are contemplated.

(4) Notify the Commission in writing at least 30 calendar days before implementation of any planned material systems changes.

(b) *Electronic filing.* A security-based swap execution facility shall submit a notification, review, or description and analysis that is required to be submitted to the Commission pursuant to this section in an appropriate electronic format. Any such notification, review, or description and analysis shall be submitted to the Division of Trading and Markets, Office of Market Operations, at the principal office of the Commission in Washington, DC. Any such notification, review, or description and analysis shall be considered submitted when an electronic version is received at the Division of Trading and Markets at the principal office of the Commission in Washington, DC.

(c) *Confidential treatment.* A person who submits a notification, review, or description and analysis pursuant to this section for which such person seeks confidential treatment shall clearly mark each page or segregable portion of

each page with the words "Confidential Treatment Requested." A notification, review, or description and analysis submitted pursuant to this section will be accorded confidential treatment to the extent permitted by law.

§ 242.823 Designation of Chief Compliance Officer of security-based swap execution facility.

(a) *In general.* Each security-based swap execution facility shall identify on Form SB SEF (referenced in § 249.1700 of this chapter) a person who has been designated by the Board to serve as a Chief Compliance Officer of the security-based swap execution facility. The compensation and removal of the Chief Compliance Officer shall require the approval of a majority of the Board.

(b) *Duties.* Each Chief Compliance Officer designated by a registered security-based swap execution facility shall:

(1) Report directly to the Board or the senior officer of the security-based swap execution facility;

(2) Review the compliance of the security-based swap execution facility with the Core Principles described in section 3D of the Act (15 U.S.C. 78c–4) and the rules and regulations thereunder;

(3) In consultation with the Board or the senior officer of the security-based swap execution facility, resolve any conflicts of interest that may arise;

(4) Be responsible for establishing and administering each policy and procedure that is required to be established pursuant to section 3D of the Act (15 U.S.C. 78c–4) and the rules and regulations thereunder;

(5) Monitor compliance with the Act and the rules and regulations thereunder relating to its business as a security-based swap execution facility, including each rule prescribed by the Commission under section 3D of the Act (15 U.S.C. 78c–4);

(6) Establish procedures for the remediation of noncompliance issues identified by the Chief Compliance Officer through any:

(i) Compliance office review;

(ii) Look-back;

(iii) Internal or external audit finding;

(iv) Self-reported error; or

(v) Validated complaint; and

(7) Establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(c) *Annual Reports.* (1) *In general.* The Chief Compliance Officer shall annually prepare and sign a report that contains a description of the compliance of the registered security-based swap execution facility with respect to the Act and the rules and regulations thereunder and each policy and procedure of the security-based swap execution facility (including the code of ethics and conflicts of interest policies of the security-based swap execution facility). Each compliance report shall also contain, at a minimum, a description of:

(i) The security-based swap execution facility's enforcement of its policies and procedures;

(ii) Information on all investigations, inspections, examinations, and disciplinary cases opened, closed, and pending during the reporting period;

(iii) All grants of access (including, for all participants, the reasons for granting such access) and all denials or limitations of access (including, for each applicant, the reasons for denying or limiting access), consistent with § 242.811(b)(3);

(iv) Any material changes to the policies and procedures since the date of the preceding compliance report;

(v) Any recommendation for material changes to the policies and procedures as a result of the annual review, the rationale for such recommendation, and whether such policies and procedures were or will be modified by the security-based swap execution facility to incorporate such recommendation;

(vi) The results of the security-based swap execution facility's surveillance program, including information on the number of reports and alerts generated, and the reports and alerts that were referred for further investigation or for an enforcement proceeding;

(vii) Any complaints received regarding the security-based swap execution facility's surveillance program; and

(viii) Any material compliance matters identified since the date of the preceding compliance report.

(2) *Requirements.* A financial report of the security-based swap execution facility shall be filed with the Commission as described in paragraph (e) of this section and shall accompany a compliance report as described in paragraph (c)(1) of this section. The compliance report shall include a certification that, under penalty of law, the compliance report is accurate and complete. The compliance report shall also be filed in a tagged data format in accordance with the instructions contained in the EDGAR Filer Manual, as described in § 232.301 of this chapter.

(d) The Chief Compliance Officer shall submit the annual compliance report to the Board for its review prior to the submission of the report to the Commission.

(e) *Financial report.* With each annual compliance report, the Chief Compliance Officer shall also prepare and submit to the Commission a financial report of the security-based swap execution facility. Each financial report filed with a compliance report shall:

(1) For the financial statements relating to the security-based swap execution facility:

(i) Be a complete set of financial statements of the security-based swap execution facility that are prepared in accordance with U.S. generally accepted accounting principles for the two most recent fiscal years of the security-based swap execution facility;

(ii) Be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with § 210.2–01 of this chapter;

(iii) Include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of § 210.2–02 of this chapter;

(iv) Include the accounting policies and practices of the security-based swap execution facility; and

(v) If the security-based swap execution facility's financial statements contain consolidated information of the security-based swap execution facility's subsidiaries, then the security-based swap execution facility's financial statement must provide condensed financial information, in a financial statement footnote, as to the financial position, changes in financial position, and results of operations of the security-based swap execution facility, as of the same dates and for the same periods for which audited consolidated financial statements are required. Such financial information need not be presented in greater detail than is required for condensed statements by § 210.10–01(a)(2), (3), and (4) of this chapter. Detailed footnote disclosure that would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations, and guarantees. Descriptions of significant provisions of the security-based swap execution facility's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the security-based swap execution facility shall be provided along with a five-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the security-based swap

execution facility have been separately disclosed in the consolidated statements, then they need not be repeated in this schedule.

(2) For the financial statements of a security-based swap execution facility's affiliated entities (any subsidiary in which the applicant has, directly or indirectly, a 25% interest and for any entity that has, directly or indirectly, a 25% interest in the applicant):

(i) Be a complete set of unconsolidated financial statements (in English) for the latest two fiscal years; and

(ii) Include such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading.

(3) All financial statements must be provided in eXtensible Business Reporting Language consistent with § 232.405 (a)(1), (a)(3), (b), (c), (d), and (e) of this chapter; and

(4) If the financial report required by § 242.823(e) is submitted to the Commission on Form SB SEF (referenced in § 249.1700 of this chapter) pursuant to § 242.802(f) at the same time that the Chief Compliance Officer submits the annual compliance report required by § 242.823(c) and the Chief Compliance Officer represents in the annual compliance report that the financial report has been submitted on Form SB SEF pursuant to § 242.802(f), the Chief Compliance Officer need not also submit the financial report as part of the annual compliance report.

(f) Reports filed pursuant to paragraphs (c) and (e) of this section shall be filed within 60 days after the end of the fiscal year covered by such reports.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

7. The general authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350 unless otherwise noted.

Subpart O—[Removed and reserved]

8. Remove and reserve Subpart O to Part 249.

9. Add Subpart R (consisting of § 249.1700) to Part 249 to read as follows:

Subpart R—Forms for Security-Based Swap Execution Facilities

§ 249.1700 Form SB SEF, form for application for registration as a security-based swap execution facility and for amendments to the registration form of a registered security-based swap execution facility.

Note: Form SB SEF does not appear in the Code of Federal Regulations.

FORM SB SEF

APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A SECURITY-BASED SWAP EXECUTION FACILITY

FORM SB SEF INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form SB SEF (referenced in 17 CFR 249.1700) is the form for the application for, and amendment to application for, registration as a security-based swap execution facility ("SB SEF") pursuant to Section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4) ("Exchange Act") and the rules of Regulation SB SEF thereunder.
2. **UPDATING**—An applicant or registered SB SEF must file amendments to its Form SB SEF in accordance with 17 CFR 242.802 and 804, as applicable.
3. **CONTACT EMPLOYEE**—The individual listed on the Execution Page (Page 1) of this Form SB SEF as the contact employee must be authorized to receive all contact information, communications, and mailings, and is responsible for disseminating such information within the applicant's organization.
4. **FORMAT**
   - Attach an Execution Page (Page 1) with original manual signatures.
   - Please type all information.
   - Use only the current version of this Form SB SEF or a reproduction.
5. If the information called for by any Exhibit is available in printed form, the printed material may be filed, provided it does not exceed 8½ x 11 inches in size.
6. If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.
7. A SB SEF that is filing this Form SB SEF as an application may not satisfy the requirements to provide certain information by means of an Internet web page. However, all materials must be filed with the Securities and Exchange Commission ("SEC" or "Commission") electronically, unless the Commission requests that the materials be filed in paper.
8. **WHERE TO FILE AND NUMBER OF COPIES**—Submit one original and two copies of this Form SB SEF to: SEC, Division of Trading and Markets, Office of Market Supervision, 100 F Street, N.E., Washington, DC 20549–7010.
9. **PAPERWORK REDUCTION ACT DISCLOSURE**
   - This Form SB SEF requires an applicant seeking to register as a SB SEF to provide the Commission with certain information regarding the operation of the SB SEF.
   - §§ 242.802 and 242.804 also require registered SB SEFs to update certain information on this Form SB SEF on a periodic basis and the entire Form SB SEF annually.
   - An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 3(a)(77), 3C(h), 3D(a), 3D(d), 3D(e), 3D(f) and 23(a) of the Exchange Act authorize the Commission to collect information on this Form SB SEF from SB SEFs. See 15 U.S.C. §§ 78c(a)(77), 78e, 78c–4(h), 78c–4(a), 78c–4(d), 78c–4(e), 78c–4(f) and 78w(a).
   - Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the facing page of this Form SB SEF and any suggestions for reducing this burden.
   - This Form SB SEF is designed to enable the Commission to determine whether a SB SEF applying for registration is in compliance with the provisions of Section 3D of the Exchange Act (15 U.S.C. 78c–4) and the rules under Regulation SB SEF thereunder.
   - It is estimated that a SB SEF will spend approximately 694 hours and $523,000 completing the initial application on Form SB SEF pursuant to 17 CFR 242.801. It is estimated that each SB SEF controlled by another person and each non-resident SB SEF will spend approximately an additional 1 hour and $900 to complete Exhibit P to the initial application on this Form SB SEF. It is also estimated that each SB SEF will spend approximately 25 hours to prepare each periodic amendment to its Form SB SEF pursuant to 17 CFR 242.802(a) and (b) and approximately 50 hours to prepare each annual update to its Form SB

SEF pursuant to 17 CFR 242.802(f). It is estimated that each SB SEF controlled by another person and each non-resident SB SEF will spend approximately 1 hour and $900 to prepare each amendment to its Form SB SEF pursuant to 17 CFR 242.802(c) and (d), respectively.

- It is mandatory that an applicant seeking to register as a SB SEF file this Form SB SEF with the Commission. It is also mandatory that registered SB SEFs file amendments to this Form SB SEF under 17 CFR 242.802 and 804.
- No assurance of confidentiality is given by the Commission with respect to the responses made in this Form SB SEF. The public has access to the information contained in this Form SB SEF.
- This collection of information has been reviewed by the Office of Management and Budget ("OMB") in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC–2 and the routine uses of the records are set forth at 40 FR 39255 (August 27, 1975) and 41 FR 5318 (February 5, 1976).

FORM SB SEF INSTRUCTIONS

B. EXPLANATION OF TERMS

APPLICANT—The entity or organization filing an application for registration as a security-based swap execution facility, or amending any such application, on this Form SB SEF.

AFFILIATE—Shall have the same meaning as set forth in 17 CFR 242.800.

BOARD—Shall have the same meaning as set forth in 17 CFR 242.800.

CONTROL—Shall have the same meaning as set forth in 17 CFR 242.800.

EXCHANGE ACT—The Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

NON-RESIDENT PERSON—Shall have the same meaning as set forth in 17 CFR 242.800.

PARTICIPANT—Shall have the same meaning as set forth in 17 CFR 242.800.

PERSON—Shall have the same meaning as set forth in section 3(a)(9) of the Exchange Act (15 U.S.C. 78c(a)(9)).

PERSON ASSOCIATED WITH A PARTICIPANT—Shall have the same meaning as set forth in 17 CFR 242.800.

RELATED PERSON—Shall have the same meaning as set forth in 17 CFR 242.800.

SECURITY-BASED SWAP—Shall have the same meaning as set forth in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)) or any rules or regulations thereunder.

SECURITY-BASED SWAP DEALER—Shall have the same meaning as set forth in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)) or any rules or regulations thereunder.

SECURITY-BASED SWAP EXECUTION FACILITY—Shall have the same meaning as set forth in section 3(a)(77) of the Exchange Act (15 U.S.C. 78c(a)(77)) or any rules or regulations thereunder.

REGISTERED SECURITY-BASED SWAP EXECUTION FACILITY—Shall mean any security-based swap execution facility registered pursuant to Section 3D(a) of the Exchange Act (15 U.S.C. 78c–4(a)) and the rules of Regulation SB SEF thereunder.

FORM SB SEF

Execution Page

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A SECURITY–BASED SWAP EXECUTION FACILITY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of the applicant, would violate the federal securities laws and may result in disciplinary, administrative, or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS

__APPLICATION FOR REGISTRATION

__ AMENDMENT

If this is an APPLICATION, indicate if the applicant requests consideration for temporary registration pursuant to Rule 801(c) of Regulation SB SEF under the Exchange Act:

____YES

____NO

If this is an AMENDMENT to an application, or to an effective registration (including an annual amendment), list all items that are amended:

_____

_____

1. State the name of the applicant: ____

_____

2. Provide the applicant's primary street address (Do not use a P.O. Box):

_____

(Number and Street)

_____

(City) (State) (Zip Code)

3. Provide the applicant's mailing address (if different):

_____

(Number and Street)

_____

(City) (State) (Zip Code)

4. Provide the applicant's business telephone and facsimile number:

_____

(Telephone) (Facsimile)

5. Provide the name, title, and telephone number of a contact employee:

_____

(Name) (Title) (Telephone)

6. Provide the name and address of counsel for the applicant:

_____

(Name)

_____

(Number and Street)

_____

(City) (State) (Zip Code)

7. Provide the date applicant's fiscal year ends:

_____

8. Indicate legal status of applicant: __ Corporation __ Sole Proprietorship __ Partnership __ Limited Liability Company __ Other (specify):

If other than a sole proprietor, indicate the date and place where the applicant obtained its legal status (e.g. state where incorporated, place where partnership agreement was filed or where the applicant entity was formed), and the statute under which the applicant was organized:

_____

(Date) (MM/DD/YYYY)

_____

State/Country of formation:

_____

(Statute under which the applicant was organized)

9. Applicant understands and consents that any notice or service of process, pleadings, or other documents in connection with any action or proceeding against the applicant may be effectuated by certified mail to the officer specified or person named below at the U.S. address given. Such officer or person cannot be a Commission member, official or employee.

_____

(Name of Person or, if the Applicant is a Corporation, Title of Officer)

_____

(Name of the Applicant or Applicable Entity)

_____

(Number and Street)

(City) (State) (Zip Code)

(Telephone)

EXECUTION: The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits, schedules, or other documents attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true, and complete. It is understood that all required items and exhibits are considered integral parts of this form and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed. The applicant and the undersigned certify that the applicant is currently in compliance with, and is currently operating its business in a manner consistent with, the Exchange Act and all rules and regulations thereunder. The applicant and the undersigned certify that the applicant is so organized, and has the capacity, to assure the prompt, accurate, and reliable performance of its functions as a security-based swap execution facility. The applicant and the undersigned certify that the applicant has the capacity to fulfill its obligations under all international information-sharing agreements to which it is a party. If the applicant is controlled by another person, the applicant and the undersigned certify that any person that controls the applicant has consented to and can, as a matter of law, (i) provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility; and (ii) submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the security-based swap execution facility. If the applicant is a non-resident person, the applicant and the undersigned further represent that the applicant can, as a matter of law, (i) provide the Commission with prompt access to the applicant's books and records and (ii) submit to an onsite inspection and examination by representatives of the Commission.

Date:

(MM/DD/YY)

(Name of applicant)

By:
(Signature)

(Printed Name and Title)

Subscribed and sworn before me this

day of

(Month)

(Year)

by

(Notary Public)

My Commission expires
County of
State of

This page must always be completed in full with original, manual signature and notarization. Affix notary stamp or seal where applicable.

FORM SB SEF

UNITED STATES SECURITIES AND EXCHANGE COMMISSION WASHINGTON, DC 20549

APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR, REGISTRATION AS A SECURITY–BASED SWAP EXECUTION FACILITY PURSUANT TO SECTION 3D OF THE EXCHANGE ACT

DO NOT WRITE BELOW THIS LINE—FOR OFFICIAL USE ONLY

EXHIBITS

File all Exhibits with an application for registration as a security-based swap execution facility pursuant to Section 3D of the Exchange Act and Rule 801 of Regulation SB SEF thereunder, or with amendments to such applications pursuant to Rule 802 and 804 of Regulation SB SEF. For each exhibit, include the name of the applicant, the date upon which the exhibit was filed, and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished in lieu of such Exhibit.

Exhibit A A copy of the governing documents of the applicant, including but not limited to, a corporate charter, articles of incorporation or association, limited liability company agreement, or partnership agreement, with all subsequent amendments, and by-laws or corresponding rules or instruments, whatever the name, of the applicant.

Exhibit B A copy of all written rulings, settled practices having the effect of rules, stated policies, and interpretations of the Board or other committee of the applicant in respect of any provisions of the governing documents, rules, or trading practices of the applicant which are not included in Exhibit A.

Exhibit C A list of the officers and directors, or persons performing similar functions who presently hold or have held their offices or positions during the previous year, and a list of all standing committees and their members (including the nominating committee, regulatory oversight committee, and all committees that have the authority to act on behalf of the Board or the nominating committee), indicating the following for each:

1. Name;
2. Title;
3. Dates of commencement and termination of term of office or position;
4. Type of business in which each is primarily engaged (e.g., security-based swap dealer, major security-based swap participant, inter-dealer broker, end-user, etc.);
5. If a director, whether such person qualifies as an "independent director" pursuant to Rule 800 of Regulation SB SEF; and
6. If a director, whether such person is a member of any standing committees, committees that have the authority to act on behalf of the Board, or the nominating committee.

Exhibit D A chart or charts illustrating fully the internal organizational structure of the applicant. The chart or charts should indicate the internal divisions or departments; the responsibilities of each such division or department; and the reporting structure of each division or department, including its oversight by committees (or their equivalent).

Exhibit E A list of all persons that have either, direct or indirect, ownership or voting interest in the security based swap execution facility that equals or exceeds 5% and a list of all related persons of such persons; provided that a related person (1) has ownership or voting interest in the security-based swap execution facility; or (2) is a participant. For each of the persons and related persons listed in this Exhibit E, please provide the following:

1. Full legal name;

2. Title or legal status;
3. Whether such person or related person is a participant;
4. Date that title, legal status, or participation in a security-based swap execution facility was acquired or commenced;
5. Percentage of ownership interest held;
6. Type of ownership interest held, including whether the ownership interest is "beneficial ownership" as defined in Rule 800 of Regulation SB SEF or is entitled to vote;
7. Percentage of voting interest held; and
8. Type of voting interest held.

Exhibit F For the latest two fiscal years of the applicant, financial statements that shall: (1) Be a complete set of financial statements of the applicant that are prepared in accordance with U.S. generally accepted accounting principles for the most recent fiscal year of the applicant; (2) be audited in accordance with standards of the Public Company Accounting Oversight Board by a registered public accounting firm that is qualified and independent in accordance with Rule 2–01 of Regulation S–X (17 CFR 210.2–01); (3) include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2–02 of Regulation S–X (17 CFR 210.2–02); (4) include the accounting policies and practices of the applicant; (4) if the applicant's financial statements contain consolidated information of a subsidiary of the applicant, then the applicant's financial statement must provide condensed financial information, in a financial statement footnote, as to the financial position, changes in financial position, and results of operations of the applicant, as of the same dates and for the same periods for which audited consolidated financial statements are required. Such financial information need not be presented in greater detail than is required for condensed statements by Rules 10–01(a)(2), (3), and (4) of Regulation S–X (17 CFR 210.10–01). Detailed footnote disclosure that would normally be included with complete financial statements may be omitted with the exception of disclosures regarding material contingencies, long-term obligations, and guarantees. Descriptions of significant provisions of the applicant's long-term obligations, mandatory dividend or redemption requirements of redeemable stocks, and guarantees of the applicant shall be provided along with a five-year schedule of maturities of debt. If the material contingencies, long-term obligations, redeemable stock requirements, and guarantees of the applicant have been separately disclosed in the consolidated statements, then they need not be repeated in this schedule; and (5) be provided in eXtensible Business Reporting Language consistent with Rules 405 (a)(1), (a)(3), (b), (c), (d), and (e) of Regulation S–T (17 CFR 232.11).

Exhibit G An executed or executable copy of any agreements or contracts entered into or to be entered into by the applicant, or a subsidiary or an affiliate of the applicant, including partnership or limited liability company, third-party regulatory service, or other agreements relating to the operation of an electronic trading system to be used to effect transactions on the security-based swap execution facility ("System"), that enable or empower the applicant to comply with Section 3D of the Exchange Act (15 U.S.C. 78c–4).

Exhibit H For each of the applicant's affiliated entities (every subsidiary in which the applicant has, directly or indirectly, a 25% interest and for every entity that has, directly or indirectly, a 25% interest in the applicant) provide a complete set of unconsolidated financial statements (in English) for the latest two fiscal years and include such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading. The financial statements shall be provided in eXtensible Business Reporting Language consistent with Rules 405 (a)(1), (a)(3), (b), (c), (d), and (e) of Regulation S–T (17 CFR 232.11). In addition to the foregoing, for all other affiliates of the applicant not listed in the paragraph above, the information required by the paragraph above shall be made available upon request.

Exhibit I Describe the manner of operation of the System. This description should include the following:
1. A detailed description of the manner in which the System satisfies the definition of "security-based swap execution facility" in Section 3(a)(77) of the Exchange Act and any Commission rules, interpretations, or guidelines regarding such definition, including a description of how the System displays all orders, quotes, requests for quote, responses, and trades in an electronic or other form, and the timelines in which the System does so; how orders interact on the System, the ability of market participants to see and transact with orders, quotes, requests for quotes, and responses; and an explanation of the trade-matching algorithm if it is based on order priority factors other than price and time;
2. The means of access to the System, including any limitations on access;
3. Procedures governing entry and display of quotations and orders in the System;
4. Procedures governing the execution, reporting, clearance and settlement of transactions in connection with the System;
5. Proposed fees;
6. Procedures for ensuring compliance with System usage guidelines and rules;
7. The hours of operation of the System and the date on which the applicant intends to commence operation of the System;
8. A copy of the users' manual or equivalent document;
9. If the applicant proposes to hold funds or securities on a regular basis, describe the controls that will be implemented to ensure safety of those funds or securities; and
10. The name of any entity, other than the security-based swap execution facility, that will be involved in operation of the System, including the execution, trading, clearing and settling of transactions on behalf of the security-based swap execution facility, and a description of the role and responsibilities of each entity.

Exhibit J A complete set of all forms pertaining to:
1. Application for participation or use of the security-based swap execution facility.
2. Application for approval as a person associated with a participant or other user of the security-based swap execution facility.
3. Any other similar materials.

Provide a table of contents listing the forms included in this Exhibit J.

Exhibit K A complete set of all forms of financial statements, reports, or questionnaires required of participants or any other users of the security-based swap execution facility relating to financial responsibility or minimum capital requirements for such participants or any other users. Provide a table

of contents listing the forms included in this Exhibit K.

Exhibit L Describe the applicant's criteria for participation in or use of the security-based swap execution facility. Provide a list of all grants of access (including, for all participants, the reasons for granting such access) and all denials or limitations of access (including, for each applicant or participant, the reasons for denying or limiting access). Describe conditions under which participants or persons associated with participants may be subject to suspension or termination with regard to access to the security-based swap execution facility. Describe any procedures that will be involved in the suspension or termination of a participant or person associated with a participant. Provide a list of all disciplinary actions taken.

Exhibit M Provide an alphabetical list of all participants or other users of the security-based swap execution facility, including the following information:

1. Name;
2. Date of acceptance as a participant or other user;
3. Principal business address and telephone number;
4. If participant or other user is an individual, the name of the entity with which such individual is associated and the relationship of such individual to the entity (*e.g.,* partner, officer, director, employee, etc.);
5. Describe the type of activities primarily engaged in by the participant or other user (*e.g.,* security-based swap dealer, major security-based swap participant, inter-dealer broker, other market maker, non-broker dealer, non-security-based swap dealer, commercial end-user, inactive or other functions). A person shall be "primarily engaged" in an activity or function for purposes of this item when that activity or function is the one in which that person is engaged for the majority of their time. When more than one type of person at an entity engages in any of the types of activities or functions enumerated in this item, identify each and state the number of participants, or other users in each; and
6. The class of participation or other access.

Exhibit N Provide a brief description of the criteria used to determine what securities may be traded on the security-based swap execution facility.

Exhibit O Provide a schedule of the security-based swaps to be traded on the security-based swap execution facility, including for each a description of the security-based swap.

Exhibit P (1) If the applicant is controlled by another person, provide an opinion of counsel that any person that controls the applicant has consented to and can, as a matter of law, (i) provide the Commission with prompt access to its books and records, to the extent such books and records are related to the activities of the security-based swap execution facility; and (ii) submit to onsite inspection and examination by representatives of the Commission with respect to the activities of the security-based swap execution facility.

(2) If the applicant is a non-resident person, provide an opinion of counsel that the applicant can, as a matter of law, (i) provide the Commission with prompt access to the books and records of such applicant and (ii) submit to onsite inspection and examination by representatives of the Commission.

By the Commission.

Dated: February 2, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2696 Filed 2–25–11; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 76 Monday,
No. 39 February 28, 2011

Part III

The President

Notice of February 24, 2011—Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

Federal Register
Vol. 76, No. 39
Monday, February 28, 2011

Presidential Documents

Title 3—

The President

Notice of February 24, 2011

Continuation of the National Emergency With Respect to Cuba and of the Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels

On March 1, 1996, by Proclamation 6867, a national emergency was declared to address the disturbance or threatened disturbance of international relations caused by the February 24, 1996, destruction by the Cuban government of two unarmed U.S.-registered civilian aircraft in international airspace north of Cuba. On February 26, 2004, by Proclamation 7757, the national emergency was extended and its scope was expanded to deny monetary and material support to the Cuban government. The Cuban government has not demonstrated that it will refrain from the use of excessive force against U.S. vessels or aircraft that may engage in memorial activities or peaceful protest north of Cuba. In addition, the unauthorized entry of any U.S.-registered vessel into Cuban territorial waters continues to be detrimental to the foreign policy of the United States. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Cuba and the emergency authority relating to the regulation of the anchorage and movement of vessels set out in Proclamation 6867 as amended by Proclamation 7757.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
February 24, 2011.

[FR Doc. 2011–4596
Filed 2–25–11; 11:15 am]
Billing code 3195–W1–P

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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S. 188/P.L. 112–2
To designate the United States courthouse under construction at 98 West First Street, Yuma, Arizona, as the ''John M. Roll United States Courthouse''. (Feb. 17, 2011; 125 Stat. 4)
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